



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2016 Sunrise Review: Process Servers

October 14, 2016



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**Department of
Regulatory Agencies**

Executive Director's Office

October 14, 2016

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The General Assembly established the sunrise review process in 1985 as a way to determine whether regulation of a certain profession or occupation is necessary before enacting laws for such regulation and to determine the least restrictive regulatory alternative consistent with the public interest. Since that time, Colorado's sunrise process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. To emphasize the statewide nature and impact of this endeavor, COPRRR recently launched a series of initiatives aimed at encouraging greater public participation in the regulatory reform process, including publication of a new "Citizen's Guide to Rulemaking" (available online at www.dora.colorado.gov/opr).

Section 24-34-104.1, Colorado Revised Statutes, directs the Department of Regulatory Agencies to conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from, the regulation.

Accordingly, COPRRR has completed its evaluation of the sunrise application for regulation of process servers and is pleased to submit this written report.

The report discusses the question of whether there is a need for regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm, and whether the public can be adequately protected by other means in a more cost-effective manner.

Sincerely,

Joe Neguse
Executive Director



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Background

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunrise Process

Colorado law, section 24-34-104.1, Colorado Revised Statutes (C.R.S.), requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review. The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA's Colorado Office of Policy, Research, and Regulatory Reform (COPRRR) is responsible for preparing a report evaluating the justification for regulation based upon the criteria contained in the sunrise statute:¹

(I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence;

(III) Whether the public can be adequately protected by other means in a more cost-effective manner; and

¹ § 24-34-104.1(4)(b), C.R.S.

(IV) Whether the imposition of any disqualifications on applicants for licensure, certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must be accompanied by supporting signatures and must include a description of the proposed regulation and justification for such regulation.

Methodology

COPRRR has completed its evaluation of the proposal for regulation of process servers. During the sunrise review process, COPRRR staff performed a literature search, contacted and interviewed the applicant, reviewed licensure laws in other states, conducted interviews of administrators of those programs, and contacted the National Association of Professional Process Servers. In order to determine the number and types of complaints filed against process servers in Colorado, COPRRR staff contacted representatives of the Denver/Boulder Better Business Bureau and the Office of the Attorney General Consumer Protection Section.

Profile of the Profession

Process servers are professionals who serve or deliver court documents to those who are party to a legal proceeding.² The term “process” is the legal name given to legal documents created by a court in legal proceedings.³ The documents detail the legal action against the person being served.

Once the legal documents are issued by the court, they must be presented to or “served” to whoever is named in the legal action.⁴ There are several types of legal documents process servers deliver, including but not limited to:

- Complaints,
- Subpoenas, and
- Summonses.

A civil complaint initiates a civil lawsuit by setting forth for the court a claim for relief for damages incurred for conduct engaged in by the defendant.⁵ The complaint outlines all of the plaintiff’s theories of relief, or causes of action as well as the facts supporting each.⁶

Complaints include identifying the location of the action, the court, the docket or file number.⁷ Each person identified in the complaint must be a person who has been injured or harmed or a person accused of causing the injury or harm.⁸

Complaints are usually drafted by attorneys after review of the basis upon which the suit is being filed.⁹

Subpoenas are court-ordered mandates that require action, such as testifying or presenting information that may help support facts presented in a legal proceeding.¹⁰ Essentially, subpoenas are requests for the production of documents or a request to appear in court or other legal proceedings.

² Process-Servers.net. *What does a process server do?* Retrieved June 27, 2016, from <http://www.process-servers.net/What-does-a-process-server-do.asp>

³ Eliteprocessservice. *Reliable Process Service - Making or Breaking Your Case.* Retrieved June, 27, 2016, from <https://eliteprocessservice.wordpress.com/category/colorado-process-service-laws/>

⁴ Eliteprocessservice. *Reliable Process Service - Making or Breaking Your Case.* Retrieved June, 27, 2016, from <https://eliteprocessservice.wordpress.com/category/colorado-process-service-laws/>

⁵ The Free Dictionary. *Complaint.* Retrieved June 28, 2016, from <http://legal-dictionary.thefreedictionary.com/complaint>

⁶ The Free Dictionary. *Complaint.* Retrieved June 28, 2016, from <http://legal-dictionary.thefreedictionary.com/complaint>

⁷ The Free Dictionary. *Complaint.* Retrieved June 28, 2016, from <http://legal-dictionary.thefreedictionary.com/complaint>

⁸ The Free Dictionary. *Complaint.* Retrieved June 28, 2016, from <http://legal-dictionary.thefreedictionary.com/complaint>

⁹ CPH & Associates. *What's the Difference Between a Complaint and a Summons?* Retrieved June 28, 2016, from <http://www.cphins.com/blog/post/whats-the-difference-between-a-complaint-and-a-summons>

¹⁰ FindLaw. *What is a Subpoena?* Retrieved June 28, 2106, from http://files.findlaw.com/pdf/litigation/litigation.findlaw.com_going-to-court_what-is-a-subpoena.pdf

Generally, a summons is a legal document that informs the accused that a civil lawsuit has been filed with a court. Summonses are issued upon filing the case by the court clerk.¹¹

Civil law refers to disputes, including when a person sues another person, business or agency.¹² Examples where civil law is applied include:¹³

- A housing case where a person is being evicted or is in foreclosure,
- A divorce or child custody case,
- A debt or bankruptcy case, or
- A case where someone sues for money because of damage to property or personal harm.

Process servers who deliver legal documents to those who are party to legal proceedings are required to complete an affidavit proving they served, or attempted to serve, defendants with legal documents. Process servers complete either the affidavit of service, affidavit of due diligence or the affidavit of non-service. The aforementioned affidavits are an important component in the legal process to “prove” that the legal documents were served, or at least, attempted to be served.

The affidavit of service is a form, which must be notarized, indicating that the legal documents were delivered to the person named in the documentation. The form is given to the process server’s client (e.g., law firm, individual or company representative) as assurance that the papers were delivered.

An affidavit of due diligence is used by process servers when the person(s) named in the legal documents cannot be located. The affidavit of due diligence must also be notarized and a copy is given to the process server’s client.

An affidavit of non-service is used when the party has not been seen for many years or it is known that the person has been deported from the United States. Again, this document must be notarized and is given to the process server’s client.

¹¹ CPH & Associates. *What’s the Difference Between a Complaint and a Summons?* Retrieved June 28, 2016, from <http://www.cphins.com/blog/post/whats-the-difference-between-a-complaint-and-a-summons>

¹² LawHelp.org. *The Difference between Criminal Court and Civil Court.* Retrieved June 28, 2016, from <http://www.lawhelp.org/resource/the-differences-between-criminal-court-and-ci#i46C6E2ED-2461-47DC-B845-8DAED9AE0286>

¹³ LawHelp.org. *The Difference between Criminal Court and Civil Court.* Retrieved June 28, 2016, from <http://www.lawhelp.org/resource/the-differences-between-criminal-court-and-ci#i46C6E2ED-2461-47DC-B845-8DAED9AE0286>

Additionally, the Process Servers Association of Colorado offers a certification for its members. The certification entails attending a two-day course, which teaches techniques, including demonstrations, related to the practice of process serving. Among the things attendees learn are:¹⁴

- How to properly serve and document service by refusal (when a defendant refuses to accept the legal documents);
- How to understand, interpret and apply the Colorado Rules of Civil Procedure; and
- How to reduce the risk of assault.

¹⁴ Process Servers Association of Colorado. *PSACO Process Servers Certification*. Retrieved July 5, 2016, from <http://psaco.org/calendar/process-servers-certification-course/>

Proposal for Regulation

The Process Servers Association of Colorado (Applicant) has submitted a sunrise application to the Department of Regulatory Agencies (DORA) for review in accordance with the provisions of section 24-34-104.1, Colorado Revised Statutes (C.R.S.). The application identifies state registration of process servers as the appropriate level of regulation to protect the public.

The sunrise application states that in order to become registered, a candidate should be required to pass a criminal background check. The sunrise application further states that due to the sensitive nature of the information contained in many legal documents, such as social security numbers, account numbers, and vehicle identification numbers, successful passage of a background check is necessary.

The sunrise application also states that individuals should be disqualified from practicing as a process server for having been convicted of the following felonies:

- Sex offenses,
- Murder,
- Aggravated assault,
- Identity theft, and
- Robbery.

Summary of Current Regulation

The Colorado Regulatory Environment

Currently, the State of Colorado does not formally regulate process servers. However, the Colorado Rules of Civil Procedure govern the civil actions in the Supreme Court, Court of Appeals, District Court and Superior Courts and in the juvenile and probate courts of the City and County of Denver.¹⁵

The three salient rules in the Colorado Rules of Civil Procedure related to process serving are:

- Rule 4 (Process),
- Rule 5 (Service and Filing of Pleadings and Other Papers), and
- Rule 45 (Subpoena).

Rule 4 within Chapter 1 of the Colorado Rules of Civil Procedure contains provisions related to process in civil cases. For example, Rule 4(c) outlines the required contents of a summons. The summons must contain the following information, including but not limited to:¹⁶

- The name of the court,
- The county in which the action is brought,
- The names or designation of the parties,
- The time within which the defendant is required to appear and defend against the claims of the complaint, and
- Notification that failing to appear in court may result in judgment by default.

Additionally, Rule 4(d) states that process (legal documents) may be served inside or outside the state of Colorado by a sheriff or by any other person who is over the age of 18 and is not a party to the action (legal proceeding).¹⁷

Rule 4(e)(1) details the process of delivering legal documents (personal service) to persons over the age of 18. Legal documents can be delivered to the person or by leaving them at the person's residence with a family member who is over the age of 18.¹⁸ Also, legal documents can be delivered to a person's place of business and the documents can be delivered to the person's secretary, bookkeeper, manager or chief clerk.¹⁹

¹⁵ USLegal.com. *Colorado Rules of Civil Procedure*. Retrieved July 5, 2016, from <http://civilprocedure.uslegal.com/rules-of-civil-procedure/state-rules-of-civil-procedure/colorado-rules-of-civil-procedure/>

¹⁶ Colorado Court Rules. Colorado Rules of Civil Procedure Chapter 1, Scope of Rules, One Form of Action, Commencement of Action, Service of Process, Pleadings, Motions and Orders. Rule 4(c).

¹⁷ Colorado Court Rules. Colorado Rules of Civil Procedure Chapter 1, Scope of Rules, One Form of Action, Commencement of Action, Service of Process, Pleadings, Motions and Orders. Rule 4(d).

¹⁸ Colorado Court Rules. Colorado Rules of Civil Procedure Chapter 1, Scope of Rules, One Form of Action, Commencement of Action, Service of Process, Pleadings, Motions and Orders. Rule 4(e)(1).

¹⁹ Colorado Court Rules. Colorado Rules of Civil Procedure Chapter 1, Scope of Rules, One Form of Action, Commencement of Action, Service of Process, Pleadings, Motions and Orders. Rule 4(e)(1).

Legal documents for persons who are under 18 years of age can be delivered to the minor's parents or guardian. If the minor does not have parents or a guardian, the documents can be delivered to a person who is caring for the minor.

Generally, Rule 5, among other things, requires every order, pleading subsequent to the original complaint, and paper relating to discovery to be served upon a party unless a court orders otherwise.²⁰

If a defendant is represented by an attorney, the legal documents can be delivered to the attorney unless personal service is ordered by the court.²¹

Rule 45 details the requirements for subpoenas such as attendance for witnesses and production of documentary evidence. Subpoenas may be issued only to compel attendance of a witness. Every subpoena must include the name of the court and the title of the action.²² Unless ordered by the court, subpoenas are required to be delivered (served) at least 48 hours before the time for appearance.²³

Regulation in Other States

According to the sunrise application, there are currently 12 states that regulate process servers. In order to determine the regulatory requirements of process servers in the regulated states, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) staff researched each state's requirements. Seven of the 12 states require a criminal background check. There are also 14 states that provide oversight of process servers at the local level, either through the court system or sheriffs' offices.

COPRRR staff also requested information from other states related to the number of complaints against process servers. The states that responded to requests for information indicated that the number of complaints were fairly limited. For example, Alaska and Nevada reported that they received fewer than five complaints against process servers. Types of complaints included: rudeness of process server and practicing without a valid license.

However, New York reported there were many complaints against process servers. It is unclear why New York received many complaints. One explanation may be the large number of practitioners.

²⁰ Colorado Court Rules. Colorado Rules of Civil Procedure Chapter 1, Scope of Rules, One Form of Action, Commencement of Action, Service of Process, Pleadings, Motions and Orders. Rule 5.

²¹ Colorado Court Rules. Colorado Rules of Civil Procedure Chapter 1, Scope of Rules, One Form of Action, Commencement of Action, Service of Process, Pleadings, Motions and Orders. Rule 5.

²² Colorado Court Rules. Colorado Rules of Civil Procedure Chapter 5, Trials. Rule 45.

²³ Colorado Court Rules. Colorado Rules of Civil Procedure Chapter 5, Trials. Rule 45.

Analysis and Recommendations

Public Harm

The first sunrise criterion asks:

Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument.

Before moving forward in the analysis of harm concerning process servers, it is important to identify what constitutes harm to the public. Process servers provide an important step in commencing lawsuits. The service of process is critical because it establishes that the court hearing the lawsuit has jurisdiction over the accused (defendant).

Without the proper service of process, consumers can be harmed in a variety of ways, including financially, emotionally and even physically. For example, the improper service of process could negate divorce proceedings, child custody or foreclosure on a home. Each of these examples could result in harm to consumers. Also, failure of service can impact a defendant's rights. For example, if a process server fails to deliver process to the defendant, the court may enter a default judgment.

In order to determine whether the regulation of process servers is necessary in Colorado, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) staff requested that the sunrise applicant provide specific examples of harm in its sunrise application. The sunrise applicant provided some examples of harm, which are highlighted below, accompanied by COPRRR's analysis.

Example 1

In 2002, an Aurora man pleaded guilty to molesting two boys. The same man was found to be serving court papers in Colorado in 2007. Currently, there is no state law or rule prohibiting a convicted sex offender from serving court papers in Colorado. The primary question is: are there others with the same background who are currently serving papers in Colorado, and does the state consider Colorado children at risk?

Analysis

The example above does not allege consumer harm by a process server. Instead the example questions whether a person who has been convicted of a sexual offense should be permitted to serve court documents as a process server.

Sexual assaults are disturbing and unsettling, and the information contained in this example highlights an instance where the potential for harm to the public is high.

Example 2

A Colorado process server, in an attempt to gain fast cash, “dropped” (failed to deliver) court documents at 26 different addresses in three counties. He went as far as creating descriptions of the persons he served to make the affidavits appear genuine. When the process serving company was notified of the issues, they investigated each case where the process server “dropped” the court documents. The company that employed the process server terminated their relationship with the process server because it was determined that the homes where the process server claimed to have “served” the court documents were vacant for a period from three months to three years. The company was sued while the process server had his hand slapped by the court, and he is currently serving papers for another company.

Analysis

This example of harm highlights instances where a process server failed to properly serve court documents to persons named in the documents.

This example illustrates an instance where state regulation could provide protection to consumers by enabling the State of Colorado to formally discipline a practitioner for failing to properly deliver court documents to consumers. Importantly, regulation, arguably, would not have prevented the initial incidences of the process server intentionally “dropping” court documents, but if a regulatory structure were created, the state could have investigated the allegations, and if necessary, imposed discipline on the practitioner.

Conversely, private employers bear some responsibility for ensuring that their employees are properly vetted, and are capable of performing process serving duties. In the example highlighted above, the employer who hired this process server after he was terminated for “dropping” court documents could have chosen not to hire him as a process server.

Example 3

A Colorado Springs woman had a default judgment entered against her in a case, and she claimed that she was never served court documents. At the motion to squash service, the process server showed the court her mother’s signature accepting service for the daughter. However, it was revealed that the mother passed away three years earlier. The court then overturned the default judgment, with no consequences to the process server other than a reprimand. The process server is still practicing in Colorado Springs.

Analysis

This example delineates an instance where a process server obtained a signature of a person who had passed away. It is unclear, however, if there was another person who claimed to be the woman's mother and signed her name or if the process server signed the document. As a result, it is impossible to determine whether this example was due to unscrupulous actions of the process server.

Thus, it is unclear where state regulation could mitigate the aforementioned example of consumer harm.

Example 4

In an attempt to force a man to identify himself, a process server engaged in an argument with a man. The process server initially encountered the man's wife and she called the man by name. Once at the door, the man refused to identify himself and asked the process server to leave the property. After many requests and threats to assault and shoot the process server, the man backed the process server off his porch and physically assaulted him in his front yard. The "service" should have been complete once the man came to the door. The process server could have served the individual by refusal once he denied his identity.

Analysis

The example presented above highlights an instance where a process server, not a consumer, was physically harmed. The process server could have simply served the individual by refusal, by leaving the court documents at the residence, thereby avoiding the physical harm that occurred.

This example shows that there is a potential for harm.

In addition, the process server in this example may not have known the process of serving an individual by refusal, which identifies potential issues of competency.

If competency was, in fact, the reason for the incident to escalate into violence, state regulation may be an option to ensure that practitioners achieve a minimum level of competency prior to practicing.

COPRRR staff also researched the 12 states that regulate process servers to determine the extent of complaints and disciplinary actions. Generally, the number of complaints and disciplinary actions imposed on process servers were limited. Some of the complaints were associated with unlicensed practice and being rude to consumers.

In an attempt to further identify consumer harm by unregulated process servers, COPRRR staff contacted the Denver/Boulder Better Business Bureau (BBB) and the Colorado Attorney General's Consumer Protection Section (AG's Office).

The BBB reported that in the past five years, it received two complaints against process servers. Both of the complaints involved practitioners who represented themselves to be members of a professional association, but were, in fact, not members. The complaints were related to practitioners who were falsely representing themselves as association members. Although it could be argued that this practice is unethical, the complaints did not allege consumer harm.

Additionally, between calendar years 2011 through 2015, the AG's Office received eight complaints against process servers. The nature of complaints is as follows:

- Non-performance of services (three complaints);
- A process serving company that was not registered with the Secretary of State's Office (one complaint);
- A process server refused to leave a person's property (one complaint);
- A process server provided improper services, where the process server left papers on the ground outside of an office (one complaint);
- A process server company was aggressively trying to enter the market and acquire other process server companies using fraudulent business practices (one complaint); and
- A general complaint was filed about the industry as a whole (one complaint).

From the complaints highlighted above, the non-performance of services complaints provides the most compelling argument for regulation of process servers. If the process servers in these complaints were failing to "serve" a person or business with legal documents, such actions could have negative consequences on a legal proceeding. Recall that serving a person who is accused in a civil lawsuit that legal action has been initiated against him or her is the first step in the legal process. If process servers fail to follow the Colorado Rules of Civil Procedure, a court proceeding may be in jeopardy of moving forward or the parties' legal rights may be negatively impacted.

Regulation of process servers for the complaints for non-performance of services could provide protection to consumers by offering a formal process for the State of Colorado to impose discipline on practitioners.

The complaint against a person who refused to leave a person's property may also provide an argument for the regulation of process servers. Although the process server in this complaint was presumably trespassing, which is criminal conduct, this action, if regulation existed, could warrant formal disciplinary action by the State of Colorado. Formal discipline could, if necessary, prevent a process server from practicing in Colorado, thereby, providing protection to consumers.

Additionally, the complaint alleging a process server left legal documents on the ground outside a business does not provide enough information to discern whether the process server actually attempted to deliver the legal documents or simply left them at the business without attempting to deliver them. As such, it is impossible to know whether the actions of the process server were inappropriate.

The remaining complaints from the AG's Office were not practice-related issues; no consumer harm was alleged. As a result, these complaints would not be grounds for formal discipline if the State of Colorado regulated process servers.

Need for Regulation

The second sunrise criterion asks:

Whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence.

This criterion addresses the proposition of whether the state should require a certain level of education and/or impose a requirement that process servers pass an examination before being regulated in Colorado.

During this sunrise review, there was very little evidence presented via examples of harm to indicate that the state should require process servers to possess a minimum level of education or pass an examination in order to practice in Colorado. COPRRR staff identified only one instance (example 4 on page 14) where the imposition of a competency requirement would enhance consumer protection. As a result, the implementation of minimum requirements could potentially impose an unnecessary barrier to entry for practitioners.

However, implementation of a requirement that process servers possess a minimum level of competency related to the existing Colorado Rules of Civil Procedure and various laws through the completion of a jurisprudence examination may be helpful.

Alternatives to Regulation

The third sunrise criterion asks:

Whether the public can be adequately protected by other means in a more cost-effective manner.

Public protection for consumers who utilize process servers could potentially be realized in a cost-effective manner by requiring process servers to obtain a certification from the Process Servers Association of Colorado (Applicant). The Applicant offers a two-day training course, which provides a general overview related to the techniques common to the process server profession.

However, there are limitations to the certification from the Applicant related to consumer protection. Although the certification provides practitioners with a baseline of knowledge in the process service profession, the Applicant does not have any mechanisms in place to formally discipline practitioners if they harm consumers.

As a result, the implementation of a state requirement that all process servers obtain the Applicant's certification prior to practicing in Colorado may have limited impact on consumer protection.

Additionally, perhaps a level of consumer protection could be achieved by requiring process servers to complete a background check. Process servers deliver legal documents on behalf of clients (e.g., law firms), so clients could require process servers to complete a background investigation prior to providing services. This alternative would not require a state mandate; instead, employers would choose to require the background checks.

The State of Colorado could also require process servers to complete a background check prior to working as a process server. Doing so would provide a baseline level of information on process servers. That is, a state requirement would establish a mechanism to identify process servers who have a criminal history and are providing services.

Implementing background checks for process servers (either through an employer or a state mandate) may offer enhanced protection to consumers. It would identify process servers who have a criminal history.

Collateral Consequences

The fourth sunrise criterion asks:

Whether the imposition of any disqualifications on applicants for licensure, certification, re-licensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

The sunrise application proposes using an applicant's criminal history as a disqualifier for eligibility for process server registration. Requiring the passage of a criminal background check could serve to insulate consumers from harm.

Process servers are a unique profession where consumers do not choose the practitioner who serves them legal documents. Consumers are unaware if a process server has a criminal past or is potentially dangerous, which could increase the potential for harm. As such, requiring a criminal history background check for process servers may serve to insulate consumers from harm.

Conclusion

The sunrise application requested registration of process servers in Colorado. Further, the sunrise application states that due to the sensitive nature of the information contained in many legal documents, such as social security numbers, account numbers, and vehicle identification numbers, successful passage of a background check is necessary.

In order to determine whether regulation is necessary to protect the public, COPRRR staff contacted the Applicant on several occasions requesting examples where consumers were harmed by process servers. COPRRR received few instances to justify government intervention in the marketplace regarding process servers.

In an attempt to further identify harm, COPRRR staff contacted a variety of other sources, such as the County Sheriffs of Colorado, the Colorado Association of Chiefs of Police and the Colorado Bar Association.

Many of the aforementioned organizations did not respond to requests for information; however, the BBB and the AG's Office did provide information related to process servers.

The BBB stated that two complaints were filed against process servers in the past five years. Neither of the complaints was practice-related. In fact, both complaints concerned two process servers who claimed to be members of an association and, in fact, were not.

During calendar years 2011 through 2016, the AG's Office received a total of eight complaints related to process servers. The nature of the complaints included:

- Non-performance issues,
- Failure to perform services,
- Improper service,
- Failure to be registered with the Secretary of State,
- Illegal entry to a home, and
- General comment that process servers should be regulated.

In an attempt to further identify consumer harm, COPRRR staff also researched the various states that require process servers to be regulated in order to practice. Most of the states that responded to COPRRR's request for information had few complaints against practitioners. However, New York reported there were many complaints against process servers.

In sum, the sunrise applicant provided some instances of consumer harm related to unregulated process servers. The BBB did not provide any complaints where process servers harmed consumers. Instead, the complaints were related to misrepresentation of a membership in a private association. The AG's Office supplied nine complaints it received in the past five years, and some were practice-related, suggesting regulation may have been appropriate.

Although this sunrise review identified very limited instances of public harm, the potential for harm is high. The process server profession is fairly unique where practitioners serve legal documents related to court proceedings to the public in a variety of settings, such as places of employment or at the respondent's residence. Members of the public do not choose the process server who serves them legal documents; instead, process servers are hired by entities, such as law firms, that are, almost by definition, adverse to them.

It is unclear whether entities that hire process servers properly vet them to ensure that they do not have a criminal record or ensure that they have knowledge of existing laws (e.g. trespassing) and regulations related to serving legal documents.

As a result, Colorado citizens could be at risk for harm by process servers. To mitigate the potential for harm, the State of Colorado should require process servers to pass a fingerprint-based criminal background check and pass a jurisprudence examination.

The fingerprint-based background check will ensure that process servers who have a criminal record are not permitted to practice in Colorado. Doing so will provide a level of protection in that persons who have committed crimes will not have the opportunity to interact with citizens as a process server.

The jurisprudence examination will ensure that process servers have a certain level of competence concerning existing laws (e.g., trespassing) and regulations related to the profession. Requiring a jurisprudence examination will establish a baseline of knowledge for practitioners concerning existing laws and regulations.

Recommendation - Require process servers to pass a fingerprint-based background check and pass a jurisprudence examination prior to practicing in Colorado.