CIVIL COURT OF THE CITY OF NEW YORK

<u>Civil Court Directive</u>   Class: DRP-160
Subject: Severance of Individuals   Category: LT-30
Named But Not Served   Eff. Date: July 22, 2002
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<u>BACKGROUND</u>:

An issue has arisen with respect to severance of individuals named in the petition who have not been served when a request for a judgment and warrant is submitted based upon failure to answer. In some counties, the warrant requests are rejected and in other counties the warrants are issued upon a request for severance, either by written request, or affidavit or affirmation, or after a motion. This Directive issued in order to create a uniform policy that is consistent with the law.

Due process requires that everyone with a legal right to possession must be properly served and given an opportunity to be heard. A warrant of eviction will be ineffective if there are additional individuals in possession with tenancy rights who have not been notified of the proceedings. The Department of Investigation has informed me that it is their policy that a marshal will only take complete possession and is not permitted to execute upon a warrant where there are additional occupants in the premises who have not been served.

In the past, respondents, undertenants and subtenants have been severed upon a written request, possibly resulting in the issuance of ineffective warrants, or worse, the eviction of persons with tenancy rights. It is not the province of the warrant clerks to determine legal issues. A determination of whether severance is appropriate rises above a ministerial act and should be decided by a Judge.

<u>DIRECTIVE</u>:

Where a person is named as a respondent, undertenant, or subtenant, a motion on notice will be required to sever that person before a warrant of eviction will be issued to be certain that the person was named in error. However, persons named in the petition by a pseudonym (e.g. "John or Jane Doe"), are often included as a part of boilerplate language on the petition and as such are more likely to have been listed due to a typographical error. Thus, where a person is named in the petition by a pseudonym, an affidavit or affirmation by someone with personal knowledge explaining that the persons were named in error, submitted to the warrant clerks requesting a severance, shall be sufficient.

The Chief Clerk is directed to provide a copy of these procedures for the Warrant Clerks to follow to implement this Directive.

Dated: July 22, 2002   Fern Fisher
                                                   Administrative Judge

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     In accordance with the Directive of the Administrative Judge, the following are the procedures to be performed by the Warrant Clerks regarding requests for severance of individuals named in the petition , but not served:

PROCEDURES:

     1. A written request by letter or notation on the "Request for Judgment" form for severance of individuals named in the petition, but not served, shall no longer be sufficient to sever such individuals. The Clerk is to reject the request for the warrant in its entirety.

     2. Where a person named in the petition by a pseudonym (e.g. "John or Jane Doe"), has not be served, an affidavit or affirmation by someone with personal knowledge requesting severance and explaining that the person was named in error and no service is required, must be submitted with the warrant application.

     3. Where a person not named by a pseudonym, but named as a respondent, undertenant or subtenant in the petition, has not been served, a motion on notice shall be required to sever such person.

     4. A judgment and warrant of eviction shall not be entertained for the individuals that were served until the individuals named but not served have been severed from the proceeding in accordance with the procedures in this Directive.

Dated: July 19, 2002   Jack Baer
                                                        Chief Clerk