

CIVIL COURT OF THE CITY OF NEW YORK

CHIEF CLERK'S MEMORANDUM

**Subject: Non-Military Affidavits:
Department of Defense**

**Class: CCM-158A
Category: GP-10, LT-10
Eff. Date: June 1, 2010**

=====
BACKGROUND

The Department of Defense Manpower Data Center (DMDC) provides a cost-free military verification service. When provided with accurate information, such as a person's name and date of birth or social security number, the Center provides its users with a cost-free military verification service. A recent Appellate Term decision, Tracey Towers Associates v. Doris Cobblah, 2010 N.Y. Slip Op. 50061(U), upheld a lower court's decision and found the DMDC military status report insufficient as it was not accompanied by any evidence demonstrating what information (other than tenant's first and last name) was provided to the DMDC to obtain the document. Based on this decision CCM-158 is amended as follows:

DIRECTIVE

The clerk may accept a Non-Military Affidavit relating to a defendant or respondent's military status for the purpose of entry of a judgment upon default when the affiant states that his or her knowledge is based upon information provided by the DMDC. The Affidavit must state at a minimum that the affiant or someone in the affiant's office contacted the DMDC requesting the defendant or respondent's military status, and that pertinent information about the defendant or respondent was provided to the DMDC. The pertinent information provided to the DMDC shall include the defendant or respondent's name and date of birth or social security number. The Affidavit must also state the basis for the affiant's knowledge that this information identifies the defendant or respondent. Additionally, the Affidavit must comply with the requirements under LSM-152B. Under such circumstances, the Affidavit shall be sufficient and no additional documentation from the DMDC shall be necessary to support the non-military investigation relating to a litigant's individual military status.

A Non-Military Affidavit relying upon information provided by any other service or website, other than the DMDC, to verify military status, will not be accepted. However, if the Non-Military Affidavit establishes that the information obtained by the service was provided by the DMDC, the Affidavit will be sufficient as long as it complies with the above and annexes documentation from the DMDC which contains the DMDC seal and the signature of the DMDC's Director.

In any case in which an eviction is a possible outcome, the Non-Military Affidavit must also have a dependency clause, and any non-military inquiry should address this issue, as well. In summary proceedings the Non-Military Affidavit must include and give facts as to the basis for the affiant's personal knowledge that the respondent is not dependent on someone in the military and should state the reason for that belief. This applies to any undertenants as well. The

report from the DMDC alone cannot prove dependency and, therefore must be accompanied by an affidavit that gives the facts as to the affiant's belief. The facts that are acceptable to establish proof of dependency are more limited than the facts acceptable to establish military status. Possible reasons for the affiant's belief that the respondent is not dependant on someone in the military are: asked the respondent personally, or, looked up respondent's record, and the records indicate that the respondent is not dependent on someone in the military. The records must be identified in the affidavit. See LSM 152B.

Dated 6/1/10

Jack Baer

Jack Baer
Chief Clerk