



Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

CHARLES T. CANADY
CHIEF JUSTICE
BARBARA J. PARIENTE
R. FRED LEWIS
PEGGY A. QUINCE
RICKY L. POLSTON
JORGE LABARGA
JAMES B.C. PERRY
JUSTICES

THOMAS D. HALL
CLERK OF COURT

KEVIN WHITE
ACTING MARSHAL

MEMORANDUM

TO: Chief Judges of the Circuit Courts

FROM: Chief Justice Charles T. Canady *CTC*

DATE: November 17, 2010

SUBJECT: Mortgage Foreclosure Proceedings

Enclosed for your review and action is a letter dated November 12, 2010, that I received from the Florida Press Association and other organizations. The letter alleges that in some instances, members of the public and/or press either have been advised that they cannot attend mortgage foreclosure proceedings or have been prevented from attending such proceedings.

As the chief administrative officer of the Florida judicial branch, I am directing all chief judges to examine the current practices within their respective circuits to ensure that those practices are entirely consistent with the constitutional, statutory, procedural rule, and case law requirements of this state regarding the presumption that state court proceedings are open to the public.

I also ask that you communicate with all judges and court staff in your circuit to remind them of the relevant provisions relating to open court proceedings. It is important for you to communicate with the clerks of court and bailiffs within your circuit as well to ensure that those offices provide any visitors

Chief Judges of the Circuit Courts
November 17, 2010
Page Two

or callers with the correct information about attendance at mortgage foreclosure or other court proceedings.

I would also like to take this opportunity to clarify the Supreme Court's understanding of the goals of the Foreclosure and Economic Recovery Funding Initiative, which was partially funded by the Legislature during the 2010 Legislative Session. I have reviewed Judge John Laurent's memorandum of October 28, 2010, a copy of which is attached and incorporated herein by reference. I agree with his description of the 62-percent goal established by the Trial Court Budget Commission as a means to help measure the court system's progress in the initiative and to document how the appropriation for the foreclosure initiative is being spent. There is no reason why the 62-percent goal should interfere with a judge's ability to adjudicate each case fairly on its merits. Each case must be adjudicated in accordance with the law.

Thank you for your ongoing efforts to appropriately administer and resolve the avalanche of mortgage foreclosure cases that have been overwhelming the court system during the past few years. I recognize that the challenge you face in assuring that these cases are resolved properly is unprecedented. I am confident that with the cooperation of all judges and court staff—along with the tools of the revised rules of court procedure, implementation of the managed mediation program, and the influx of court resources through the Foreclosure and Economic Recovery Funding Initiative—the Florida courts will be able to meet this challenge in a manner that protects and preserves the rights of all parties as well as interested observers.

CTC/LG/dgh

Enclosures

cc: Trial Court Administrators



Florida Press Association
336 E. College Avenue, Suite 203
Tallahassee, FL 32301
(850) 521-1199
Fax (850) 577-3629

Chief Justice Charles T. Canady
Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399-1925

November 12, 2010

Dear Chief Justice Canady,

We write to express our concern that the right to open access to judicial proceedings is being unduly impeded in foreclosure proceedings around the state. Our organizations have received numerous reports that extraordinary barriers to access are preventing members of the general public, as well as representatives of the news media, from observing foreclosure proceedings in judicial circuits around the state. We believe these barriers undercut the transparency of the judicial process; they also violate the strong presumption of open access to judicial proceedings under Florida law. We urge you to take action to secure the public's right to observe the workings of the judicial system.

As you know, Florida law recognizes a strong presumption in favor of open access to judicial proceedings. We have no objection, of course, to ordinary security screening measures. We are concerned, however, that the barriers to access here go far beyond such measures, leaving members of the public and press subject to the discretion of individual foreclosure judges to admit or exclude them.

The reports we have received come from all around the state, and although the precise nature of the barriers to access varies, a troubling pattern emerges: foreclosure divisions recently established by the judicial circuits have been operating under a presumption of closure to members of the general public, rather than the presumption of openness mandated by Florida law. An illustrative, but not exhaustive, list of encounters that have been reported to our organizations since August 2010 follows:

- A court observer in Hillsborough County called the court to ask about the rules governing attendance at foreclosure proceedings and was told that the proceedings were not open to the public.
- A pro se defendant in Duval County was told by a member of court security that she could not access foreclosure proceedings because only attorneys were permitted.
- A court observer called the Orange County courthouse to ask about attending foreclosure proceedings. She was informed that foreclosure hearings were held "in private chambers" and therefore not open to the public.

- In Citrus County, an individual preparing to mount a pro se defense in his own foreclosure case attempted to attend foreclosure hearings in advance of his own so that he could know what to expect when his case was heard. He was told that foreclosure hearings are "private" and take place in judges' chambers, and that he would not be permitted to observe them.
- Most recently, a legal aid attorney in Jacksonville attended a foreclosure proceeding accompanied by a reporter from Rolling Stone Magazine. Neither the attorney nor the reporter did anything disruptive to the proceedings. At one point the reporter left the proceedings in order to interview a pro se litigant whose case had just been heard. Later that day, the judge sent an email to the attorney castigating her for bringing the reporter into the proceedings. He stated that, while "attorneys are welcome in Chambers at their leisure," members of the media are "permitted" entry only upon "proper request to the security officer." He further informed the attorney that she "did not have authority to take anyone back to chambers without proper screening" and stated that her "apparent authorization that the reporter could pursue a property owner immediately out of Chambers into the hallway for an interview" may be "sited [sic] for possible contempt charges in the future."¹

In raising our concerns about this pattern of exclusion, we rely on the extensive body of case law that has made Florida a model for open government. Systematically excluding members of the press and public from judicial foreclosure proceedings violates the robust guarantee of open access to courts provided by Florida law. This Court has held that "both civil and criminal court proceedings in Florida are public events and adhere to the well established common law right of access to court proceedings and records." *Barron v. Fla. Freedom Newspapers, Inc.*, 531 So. 2d 113, 116 (Fla. 1988); see also Fla. R. Jud. Admin. 2.420 (codifying public right of access to records of the judiciary). *Barron* articulated this right of access in forceful terms. It emphasized that "a strong presumption of openness exists for all court proceedings" and outlined the carefully circumscribed exceptions to this broad rule:

[C]losure of court proceedings or records should occur only when necessary (a) to comply with established public policy set forth in the constitution, statutes, rules, or case law; (b) to protect trade secrets; (c) to protect a compelling governmental interest [e.g., national security; confidential informants]; (d) to obtain evidence to properly determine legal issues in a case; (e) to avoid substantial injury to innocent third parties [e.g., to protect young witnesses from offensive testimony; to protect children in a divorce]; or (f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.

¹ Since the incident in Duval County was particularly egregious, we have also asked that Chief Judge Moran consider appropriate action.

Id., at 118. Even in these exceptional circumstances, “before entering a closure order, the trial court shall determine that no reasonable alternative is available to accomplish the desired result, and, if none exists, the trial court must use the least restrictive closure necessary to accomplish its purpose.” *Id.*

The protection of public access to judicial proceedings serves fundamental constitutional values. In particular, the “value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known.” *Sarasota Herald-Tribune v. State*, 924 So. 2d 8, 12 (Fla. 2d DCA 2005) (quoting *Press-Enter. Co. v. Super. Ct.*, 464 U.S. 501, 508 (1984)). “A trial courtroom is a public place where people have a general right to be present, and what transpires in the courtroom is public property.” *Plaintiff B v. Francis*, No. 5:08-cv-79, 2010 WL 503067, *2 (N.D. Fla. Feb. 5, 2010). Foreclosure proceedings are currently a matter of intense public interest. Indeed, the media has, in recent months, scrutinized them for possible procedural deficiencies. See, e.g., Gretchen Morgenson and Geraldine Fabrikant, *Florida’s High-Speed Answer to a Foreclosure Mess*, N.Y. TIMES, Sept. 14, 2010; Polyana da Costa, *Before Foreclosing, Judges Must Hear Out Homeowners*, MIAMI DAILY BUS. REV., Oct. 14, 2010.

As the examples outlined above show, Florida’s presumption of openness is being inverted in the context of foreclosure proceedings: courts across the state are effectively imposing a presumption of closure, which may be overcome only by special permission to observe proceedings. In effect, only those who actively assert their right of access in the face of initial barriers, and then ultimately receive permission, may exercise their right to observe foreclosure hearings.

Under Florida law, there are few justifications that can counterbalance the right to access. Even when those exceptional circumstances exist, the court must still determine that no more narrowly tailored alternative is available. *Barron*, 531 So. 2d at 118; see also *Globe Newspaper Co. v. Super. Ct. for the County of Norfolk*, 457 U.S. 596 (1982) (invalidating statute closing trials for certain sex offenses involving minors where state had a “compelling” interest in protecting minors’ privacy but where the court “offered no empirical support” that closure would effectively further that interest). There is no indication that closure of foreclosure courts occurs only when such rigorous analysis has taken place. Indeed, the opposite appears to be true: by choosing to conduct foreclosure hearings in “private” conference rooms or judicial chambers and treat those as closed proceedings, the burden shifts to members of the press or public to convince the court to allow access.

We recognize that the heavy volume of foreclosure cases has led to difficulties finding judges and courtrooms to hear the cases. As a result, some cases are being held in chambers for lack of an available traditional courtroom. Nevertheless, the proceedings must be open, even if they are held temporarily in a smaller and less formal physical

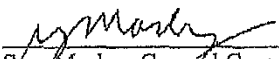
setting than usual. While we understand the necessity for ordinary and uniform security screening procedures, the unavailability of a traditional courtroom cannot justify a deprivation of the rights established under Florida law and the U.S. Constitution.

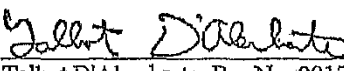
This Court has noted that the press plays an indispensable role in maintaining "the judicial system's credibility in a free society." *Barron*, 531 So. 2d at 116. That credibility cannot be maintained when members of the public and media are dependent on the indulgence of the presiding judge to allow them to observe important judicial proceedings.

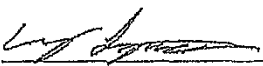
It is our sincere hope that we, and other representatives of the media, will be able to avoid instituting litigation over the issue of access to foreclosure proceedings. We do face certain time constraints, however, because Florida Rule of Appellate Procedure 9.100(d) provides for expedited review of orders excluding the public and media from judicial proceedings, and it requires such petitions to be filed within 30 days of an exclusion order.²

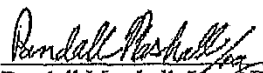
Accordingly, we respectfully urge you to take corrective action to ensure citizen and press access as guaranteed by Florida's right-of-access jurisprudence. In particular, we ask that you promulgate an Administrative Order or take other expeditious and appropriate action to ensure that both the public and media may observe proceedings consistent with Florida law and subject only to ordinary security measures

We thank you for your attention to this important matter.

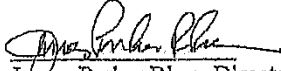

Sam Morley, General Counsel
The Florida Press Association


Talbot D'Alemberte, Bar No. 0017529
The Florida Press Association


Larry Schwartz, Staff Attorney
The American Civil Liberties Union


Randall Marshall, Legal Director
The American Civil Liberties Union of Florida

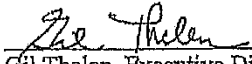
² The incident in Duval County occurred on October 26th. Accordingly, the last day to file a petition for review pursuant to Rule 9.100(d) is November 29th.



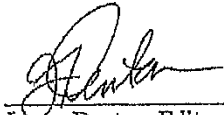
James Parker Rhea, Director & General Counsel
The First Amendment Foundation



C. Patrick Roberts, President & CEO
Florida Association of Broadcasters



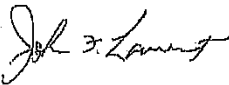
Gil Thelen, Executive Director
The Florida Society of Newspaper Editors



James Denton, Editor
The Florida Times-Union



MEMORANDUM

TO: Chief Judges of the Circuit Courts
FROM: John Laurent 
DATE: October 28, 2010
SUBJECT: Foreclosure Initiative

*The Honorable
John F. Laurent, Chair*

*The Honorable
Margaret Steinbeck,
Vice-Chair*

Members

- Catherine Brunson, Circuit Judge*
- Paul S. Bryan, Circuit Judge*
- Joseph P. Farina, Circuit Judge*
- Charles A. Francis, Circuit Judge*
- Mark Mahon, Circuit Judge*
- J. Thomas McGrady, Circuit Judge*
- Wayne M. Miller, County Judge*
- Belvin, Perry, Jr., Circuit Judge*
- Robert E. Roundtree, Jr., Circuit Judge*
- Clayton D. Simmons, Circuit Judge*
- Elijah Smiley, Circuit Judge*
- Patricia V. Thomas, Circuit Judge*
- Mike Bridenback, Court Administrator*
- Tom Genung, Court Administrator*
- Sandra Lonergan, Court Administrator*
- Carol Lee Orلمان, Court Administrator*
- Walt Smith, Court Administrator*
- Mark Weinberg, Court Administrator*
- Robin Wright, Court Administrator*

Ex-Officio Members

- The Honorable Kevin M. Emas
Florida Conference of Circuit Court Judges*
- The Honorable Susan F. Schaeffer
Chair Emeritus*

Supreme Court Liaison

Justice James E. C. Perry

Florida State Courts System
500 South Duval Street
Tallahassee, FL 32399-1900
www.flcourts.org

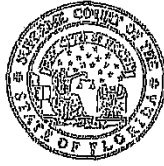
In follow up to the Judicial Administration Committee conference call held on October 18, 2010, I am writing to reiterate the Trial Court Budget Commission's purpose for tracking the progress of cases the trial courts are hearing using funding provided for the foreclosure and economic recovery initiative. When the Florida Legislature appropriated special funding of \$6 million to help the trial courts with the significant backlog of foreclosure cases, the Trial Court Budget Commission established a measurement of progress that corresponded to the funding received: 62% of the backlog cases potentially could be processed because the Legislature funded 62% of the original request from the courts. A simple case tracking system was set up to monitor the progress and identify any reasons for delays. This is so that we will be able to report to the Legislature on how these funds were used. However, the Legislature has not specifically directed us to make such a report.

The 62% rate is not a quota. The 62% rate is simply a goal set by the TCBC to help measure the courts' progress in this initiative and document how the appropriation for the foreclosure initiative is being spent. The 62% rate was set before the initiative began and, most notably, before many of the lender moratoriums and other delays occurred. Please assure judges working on this project that the 62% rate was never intended to interfere with their ability to adjudicate each case fairly on its merits.

We will continue to monitor the progress of this initiative because we have an obligation to account for how these funds have been used. But we also will document all issues related to any difficulties that prevent or delay the court from hearing and disposing of cases before them.

JL/ks

cc: TCBC Members



Supreme Court of Florida

500 South Duval Street
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CLERK OF COURT

KEVIN WHITE
ACTING MARSHAL

November 17, 2010

Mr. Sam Morley
General Counsel
The Florida Press Association
336 East College Avenue, Suite 203
Tallahassee, Florida 32301

Mr. Talbot D'Alemberte
Mr. Larry Schwartzol
Mr. Randall Marshall
Mr. James Parker Rhea
Mr. C. Patrick Roberts
Mr. Gil Thelen
Mr. James Denton

Gentlemen:

Thank you for your letter of November 12, 2010, regarding public access to Florida foreclosure proceedings. As you know, judicial ethics rules prohibit me from intervening in actual legal disputes pending or likely to be filed in lower courts, including the possible future litigation you mentioned with regard to an incident in Duval County.

But Canon 3C(3) of the Florida Code of Judicial Conduct expressly says that "[a] judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure . . . the proper performance of their other judicial responsibilities." Under the Florida Constitution, article V, section 2(b), I

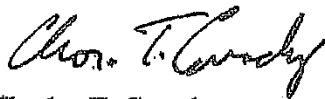
Mr. Sam Morley, et al.
November 17, 2010
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am the chief administrative officer of the state courts system. I write you solely in that capacity.

The courts of Florida belong to the people of Florida. The people of Florida are entitled to know what takes place in the courts of this state. No crisis justifies the administrative suspension of the strong legal presumption that state court proceedings are open to the public.

Today I have sent to the chief judges of Florida's twenty judicial circuits a supervisory memorandum—a copy of which is enclosed—setting forth my administrative directive on this matter. Under that directive, the chief judges shall ensure that the judges they supervise and the staff who report to those judges, as well as bailiffs and employees of the clerks of court, are not violating the rights of Floridians by improperly closing judicial proceedings to the public. The chief judges shall promptly exercise their administrative and supervisory authority to countermand closures or impediments to access that are inconsistent with Florida law.

Sincerely,



Charles T. Canady

CTC/ps

Enclosure

From: [Amanda Bailey](#)
To: [Marty Maldonado](#)
Subject: CMC Order

Sent: Thu, 18 Nov 2010 14:22:00 GMT

 **CMC ORDER.doc (47Kb)**

Hi Marty,

Please see the attached CMC Order. Let me know if you need anything else.

Thanks,

Amanda Bailey
Court Program Specialist II
Foreclosure & Economic Recovery Program
Okaloosa & Walton Counties
101 E. James Lee Blvd.
Crestview, FL 32536
(850) 689-7329

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IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION

Plaintiff,

VS

CASE NO.:

Defendant.

ORDER SCHEDULING CASE MANAGEMENT CONFERENCE

This Case is scheduled for a Case Management Conference in accordance with Rule 1.200(a), Florida Rules of Civil Procedure and current administrative orders of the court. The case management conference is scheduled for _____ at _____ CST, at the _____ County Courthouse, _____, before the Honorable Keith Brace.

The purpose of this Case Management Order is to identify and resolve outstanding issues and determine what action is necessary to move the case expeditiously to resolution, because of the length of the time that this case has been pending. The parties are hereby notified that **all pending motions** may be considered at the Case Management Conference, including any pending summary judgment motion. All opposition to any such motion must be filed and served in accordance with Rule 1.510 (c), Florida Rules of Civil Procedure, with a courtesy **copy to Amanda Bailey, Foreclosure Division Case Manager, 101 E. James Lee Blvd., Crestview, Florida, 32536.** (The Court will also consider discovery motions.) Attorneys should appear having first attempted to resolve those issues with opposing counsel, and fully prepared to argue those motions.

Appearance at Case Management Conference

The Court has determined that presence at the Case Management Conference of the parties, Plaintiff and Borrowers is required.

For Plaintiff, appearance shall be by a person with specific knowledge of the case and the ability to answer questions by the Court, including but not limited to the status of loss mitigation efforts, knowledge and consent of investors as to settlement, vacancy/tenancy of the property, and

diligent search for borrowers. **Attendance is required, failure to appear by either party or failure to appear with requisite knowledge shall be grounds for dismissal, striking of pleadings, entry of default and/or other sanctions as the Court deems appropriate.**

A Case Management Report as detailed in this order shall be filed by the Plaintiff and any appearing Defendant in the case as required below, except that the Parties may file the following, and only the following, in lieu of the Case Management Report:

1. A Stipulation of Voluntary Dismissal and Proposed Order of Dismissal agreed to by parties.
2. A Stipulation of Settlement or Forbearance with a Proposed Order of Dismissal reserving jurisdiction to enforce the settlement of forbearance.
3. In a situation in which the case has been finalized, but remains open on the court's docket, a Motion for Case Closure and Proposed Order to Close Case. A photocopy of the order which finalized the case shall be attached as an exhibit to the motion, for example: a final judgment, an order of dismissal, or an order dismissing for lack of prosecution. This category is for cases that should have been closed, but are still listed as open due to some error. The proposed order should state that this case shall be closed due to *{state specific grounds}* _____.
4. In cases which are stayed or abated due to bankruptcy, a Motion Advising of Bankruptcy Status, which attaches a current bankruptcy case docket and an indication of whether or when relief from stay will be sought, with a Proposed Order regarding Bankruptcy Status reflecting that the case is still in bankruptcy.

Required Case Management Report:

A Case Management Report shall be filed by each party with the Clerk of Court, served on opposing parties, with a courtesy copy delivered to Amanda Bailey, Foreclosure Division Case Manager, 101 E. James Lee Boulevard, Crestview, Florida 32536. This report shall be filed and delivered no later than ten (10) days prior to the scheduled Case Management Conference.

The Case Management Report shall include:

1. **Date of filing of complaint and status** of complaint, including any lost note count.
2. **Status of pleadings of each defendant.** An accurate statement as to:
 - a. Service, method of service, non-military affidavit
 - b. Response filed:

- i. Motion to dismiss, pending or resolved
- ii. Motions for extension of time, pending or resolved
- iii. Answers from Defendants identified by name
- iv. Motions to Strike Affirmative Defenses, pending or resolved
- v. Copies of all outstanding motions and responses shall be attached to the Case Management Report

3. **Status of the Property:** Whether owner-occupied, tenant-occupied, or vacant. If vacant, Plaintiff must advise whether they will seek an expedited sale date if available.
4. **Status of Documents:** Is Plaintiff in possession of the original note? What is the chain of ownership of the note? Are there assignments of mortgage? **The original documents should be brought to the Case Management Conference for examination by the Court.**
- a. If the case is a lost note case, an adequate lost note affidavit that complies with Florida Statute should be filed separately in the case and a copy provided with the Case Management Report.
5. **Status of Mediation:** Has any party requested mediation? Should mediation be ordered? If mediation was ordered, has it occurred and what was the outcome?
6. **Status of Loss Mitigation:**
- a. Does this properly qualify for the HAMP Program?
 - b. Identify and list what HAMP outreach has occurred. Proof/documentation of same should be brought to the Case Management Conference.
 - c. Has the foreclosure been put on hold at any time?
 - d. Are there any current active loss mitigation efforts, including short sale?
 - e. What if anything, is delaying a loss mitigation determination?
 - f. What are the results of eligibility determination for loss mitigation?
 - g. What is status of compliance with all U.S. Treasury directives and regulations?
7. **Status of the Case:**
- a. Has Plaintiff sought summary judgment?
 - i. Was the motion set for hearing, when, what result? If the hearing was canceled, advise as to reasons for cancellation.
 - ii. If the motion was not set for hearing, advise as to reasons and whether it is ripe for summary judgment.

- iii. If all affidavits have been filed, is the matter ready for determination of a Motion for Summary Judgment at the time of the Case Management Conference?
- b. What discovery, if any, has occurred or is outstanding?
 - i. If there is discovery outstanding, has a motion to compel been filed?
 - ii. If objections have been filed, was a discovery hearing held and an order entered by the Court?
 - iii. What reasons exist for delays in discovery?
 - iv. Indicate outstanding objections to discovery that are pending and the basis for those objections.
 - v. Counsel/parties are directed to confer on any outstanding discovery between the time of the filing of the report and the Case Management Conference, in an attempt to narrow the issues. Failure to do so will result in sanctions.
 - vi. Courtesy copies of all outstanding discovery and responses thereto shall be attached to the Case Management Report.
- 8. Status of Related Cases/Title:** Are there any other related cases involving any other foreclosures, ownership, lien or title issues, and are there any related cases involving insurance issues? If so, each case should be identified by complete case style.
- 9. Status for Trial:** If summary judgment has been denied, or no summary judgment will be sought, is the case ready for trial?
 - a. Parties must list known witnesses and exhibits on the Case Management Report.
 - b. Parties must list what discovery is necessary to prepare the case for trial.
 - c. Motions which must be resolved prior to trial (limine, etc)
 - d. Any other issues which may affect trial status should be brought to the Court's attention.
 - e. Coordinate the course of the case, including:
 - (a) Allocation of time for trial;
 - (b) Scheduling disclosure of final witness lists, discovery and exhibits;
 - (c) Discussion of evidence and affirmative defenses to claim;
 - (d) Setting of trial thirty (30) days from case management conference;

f. Require filing of preliminary stipulations if issues can be narrowed.

The information contained in the report must be accurate as to the status of the case. By signing the Case Management Report, the attorney signing is certifying accuracy. The attorney signing the report should be the attorney appearing at the Case Management Conference. Plaintiff must bring stamped addressed envelopes for all parties on the service list to the Case Management Conference.

Scheduling of Dates

Parties must bring their calendars to the Case Management Conference to schedule remaining court events and court-related events. **The Court cautions Counsel that it is the objective of this Court Division to promptly and efficiently provide resolutions to outstanding foreclosure cases.** Counsel shall be prepared to schedule those events according to priorities established by administrative order of this Court.

IF THE PARTIES OR COUNSEL FAIL TO ATTEND THIS CONFERENCE, THE COURT MAY DISMISS THE ACTION, STRIKE PLEADINGS, LIMIT PROOF OF WITNESSES OR TAKE ANY OTHER APPROPRIATE ACTION AS PROVIDED IN RULE 1.200

THIS CASE MANAGEMENT CONFERENCE MAY BE CANCELLED ONLY BY THE COURT. Rescheduling should be sought through a motion to continue for good cause.

DONE and ORDERED in _____ County, Florida, on this ____ day of _____, 2010.

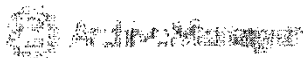
Keith Brace
Senior Judge

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent via regular U.S. Mail on the ____ day of _____, 2010, to the following:

DON W. HOWARD
CLERK OF COURTS

DEPUTY CLERK

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact: Shelia Sims, 190 Governmental Center, 5th Floor, Pensacola, FL 32502 (850) 595-4400 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.



From: [Amanda Bailey](#)
To: [Felicia Veneziano](#)
Subject: RE: LOP Hearing (Okaloosa County)

Sent: Mon, 22 Nov 2010 10:13:00 GMT

No ma'am. Judge Brace does not allow telephonic appearances.

Amanda Bailey
Court Program Specialist II
Foreclosure & Economic Recovery Program
Okaloosa & Walton Counties
101 E. James Lee Blvd.
Crestview, FL 32536
(850) 689-7329

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From: Felicia Veneziano [mailto:fveneziano@popkinrosaler.com]
Sent: Monday, November 22, 2010 9:30 AM
To: Amanda Bailey
Subject: LOP Hearing (Okaloosa County)

Good Morning Amanda,
We received a Motion to Dismiss for Lack of Prosecution on the below referenced case. I was wondering if it would be possible to attend telephonically for this hearing? Thank you and have a wonderful day.


US Bank National Association vs. Paul Petro
2009 CA 002738
LOP Hearing
Set for 12/01/2010 at 11:00am

Felicia Veneziano
fveneziano@popkinrosaler.com
Legal Assistant
Law Offices Of Popkin & Rosaler, P.A.
1701 West Hillsboro Boulevard, Suite 400
Deerfield Beach, FL 33442
Phone : 954-360-9030 Ext. 251
Toll Free : 1-866-360-9030
Fax : 954-420-5187

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From: [Amanda Bailey](#) **Sent:** Tue, 23 Nov 2010 09:38:00 GMT
To: [Ellen Stevens](#)
CC: [Dianne Rogers](#)
Subject: RE: US Bank N.A. vs Judy Coxwell - MSJ hearing 1/5/11 needs to be cancelled

 [image001.jpg \(3Kb\)](#)

Good Morning,

Judge Brace requires that a Motion and Order to Show Good Cause be submitted in order to cancel a hearing.

Thank you,

*Amanda Bailey
Court Program Specialist II
Foreclosure and Economic Recovery Program
Okaloosa and Walton Counties
101 East James Lee Boulevard
Crestview, FL 32536*

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From: Ellen Stevens [mailto:ESTevens@vanlawfl.com]
Sent: Tuesday, November 23, 2010 9:35 AM
To: Amanda Bailey
Cc: Dianne Rogers
Subject: US Bank N.A. vs Judy Coxwell - MSJ hearing 1/5/11 needs to be cancelled

Good morning,

Our local counsel set the following contested Motion for Summary Judgment hearing to take place on 1/5/2011 @ 1:00 PM before Judge Brace. Our client has requested that we close & bill our file as a short sale has been completed. Please confirm if you will remove from your calendar and if anything other than a Notice of Cancellation is needed. Thank you!

Case#: 2009 CA 005038
Style: U.S BANK NATIONAL ASSOCIATION vs. JUDY COXWELL

Thank you,

Ellen Stevens, Legal Assistant

X cid:image001.jpg@01C8F2ED.8F202

1239 E. Newport Center Drive
Suite 110
Deerfield Beach, FL 33442
Ph: 954-571-2031 Ext. 242
Fax: 954-571-2033
estevens@vanlawfl.com

Pursuant to the Fair Debt Collection Practices Act you are hereby advised that portion of our practice involves the collections of debts and any information obtained may be used for that purpose

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From: Kurt Zauke **Sent:** Tue, 23 Nov 2010 14:28:11 GMT
To: Amanda Bailey
CC: Yoshika Wong; Karen Morgan, Esq.; Keesha Robertson; Efrain Figueroa;
Subject: FW: 2008 CA 000547 08-01307 SHAHID, LISA A vs. Suntrust

Ok Thank You Amanda, we will talk tomorrow.

Kurt Zauke
Judgment Hearing Setter
Law Offices of Marshall C. Watson P.A.
1300 NW 49th Street | Suite 120 | Fort Lauderdale FL 33309
Office: (954) 453-0365 Ext 1796

Email: kurt.zauke@marshallwatson.com

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From: Amanda Bailey [<mailto:amanda.bailey@flcourts1.gov>]
Sent: Tuesday, November 23, 2010 3:08 PM
To: Kurt Zauke
Subject: RE: 2008 CA 000547 08-01307 SHAHID, LISA A vs. Suntrust

Hi Kurt,

I am not in my office today, and I have not had the opportunity to check my voice mail. Judge Brace does not give out dates; he requires all parties be on the line when coordinating the hearing, including local counsel and HOA's. Please note that the HOA does have attorney representation in this case. Also, this case is an Okaloosa County case (which is helpful information when inquiring about hearing dates and times) and the December 16th date that you mentioned is for Walton County cases. I will return to my office tomorrow and I will be more than happy to set the hearing with all parties then.

Thanks!

Amanda Bailey
Court Program Specialist II
Foreclosure and Economic Recovery Program
Okaloosa and Walton Counties
101 East James Lee Boulevard
Crestview, FL 32536

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From: Kurt Zauke [<mailto:kurt.zauke@marshallwatson.com>]

Sent: Tuesday, November 23, 2010 2:02 PM
To: Amanda Bailey
Cc: Efrain Figueroa; Yoshika Wong; Keesha Robertson
Subject: 2008 CA 000547 08-01307 SHAHID, LISA A vs. Suntrust

Hi Amanda,

I left you a voice mail message this afternoon about this case.

Could you please give me a date and time for this case for an MSJ hearing. I believe you have some on December 16.

Thank You

Kurt Zauke
Judgment Hearing Setter
Law Offices of Marshall C. Watson P.A.
1800 NW 49th Street | Suite 120 | Fort Lauderdale FL 33309
Office: (954) 453-0365 Ext 1796
Email: kurt.zauke@marshallwatson.com



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From: [Amanda Bailey](#) **Sent:** Tue, 23 Nov 2010 15:58:00 GMT
To: [Christine Kelly](#)
Subject: RE: Case Number 2009-CA-2276-C - Hearing Cancellation

Hello,

Judge Brace requires a motion and order to show good cause to cancel a hearing (there is also an administrative order for Okaloosa county which has the same requirement). Failure to comply with his requirement may result in the dismissal of the foreclosure action.

Thanks,

*Amanda Bailey
Court Program Specialist II
Foreclosure and Economic Recovery Program
Okaloosa and Walton Counties
101 East James Lee Boulevard
Crestview, FL 32536*

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From: Christine Kelly [mailto:ckelly@lglaw.net]
Sent: Tuesday, November 23, 2010 3:42 PM
To: Amanda Bailey
Subject: Case Number 2009-CA-2276-C - Hearing Cancellation

Good Afternoon:

Please cancel the following hearing:

Case Number 2009-CA-2276-C
Our File Number – 09-001058
Case Style: HSBC Bank USA vs. Burl Teboe III
Motion for Default Final Judgment of Foreclosure
Scheduled for 12/1/2010 at 2:00pm

Thank you

*Christine Kelly
Gladstone Law Group, P.A.*

1499 W. Palmetto Park Road, Suite 300
Boca Raton, FL 33486
Phone 561-338-4101 Ext. 217
Fax 561-338-4077
ckelly@lglaw.net

x cld:image001.jpg@01CA5622.A76F3

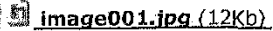
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Sale Cancellation Notice: Effective February 11, 2010 the Supreme Court requires any cancellations of sale to be submitted by Motion and Order, proof of reason must be provided and a hearing may be required. To request the cancellation of a foreclosure sale scheduled within 72 hours, please contact our office by telephone at 561.338.4101 to advise of the cancellation AND send an email to Sale@lglaw.net regarding the same. Bidding Instructions should be provided for all loans unless the cancellation is confirmed. If we are not able to cancel a sale and bidding instructions are not received, we will be required to post a bid up to the full judgment amount.

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From: [Amanda Bailey](#)
To: [Rusty Stinson](#)
Subject: RE: Hearing Dates

Sent: Wed, 24 Nov 2010 11:09:00 GMT



Mr. Stinson,

Judge Brace requires all parties be on the phone to coordinate a hearing, he does not give out dates.

Thanks,

Amanda Bailey

Court Program Specialist II

Foreclosure & Economic Recovery Program

Okaloosa & Walton Counties

101 E. James Lee Blvd.

Crestview, FL 32536

(850) 689-7329

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From: Rusty Stinson [mailto:RStinson@burkeblue.com]
Sent: Tuesday, November 23, 2010 1:54 PM
To: Amanda Bailey
Subject: Hearing Dates

Ms. Bailey,

Will you please provide me with at least three (3) hearing dates in January, 2011 for a Motion for Summary Judgment of Foreclosure. At least 15 minutes will be needed. The case style is as follows:

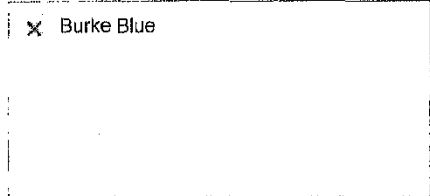
Walton County Case No.: 09-CA-001780
Southeast First National Bank

v.
Gerald T. Merritt, et al

Chris Barr is the attorney for the Plaintiff and William E. Wyrrough, Jr. is the attorney for the Defendant.

Thank you,

Rusty Stinson
Assistant to J. Christopher Barr



221 McKenzie Avenue
Panama City, FL 32401
(850) 769-1414
Fax (850) 784-0857

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From: msmith@defaultlawfl.com
To: [Amanda Bailey](mailto:Amanda.Bailey)
Subject: RE: Hearing Requests - Okaloosa

She will be there Jan 5 at 1:00 pm on a Motion for Mediation.

On the Motions for Judicial Default - are you saying this because there is no one to coordinate with on these two or is this for ANY Motion for Judicial Default? If so, I will see how a

Mark T. Smith **
The Florida Default Law Group, PL
813.342.2200 ext 3057
813.251.1543 - Fax
msmith@defaultlawfl.com

-----Original Message-----
From: Amanda Bailey [mailto:amanda.bailey@courtal.gov]
Sent: Wednesday, November 24, 2010 12:12 P M
To: Mark Smith
Subject: RE: Hearing Requests - Okaloosa

Hi Mark,
The cases in which you need a hearing for a Judicial default, if you send in an order Judge Brace will typically sign those. If he requires a hearing, he will let you know. On the case where you need to set a hearing for a Motion to Dismiss, what date is Shayne available and I will fit it in somewhere.

Happy Thanksgiving!
Amanda Bailey
Court Program Specialist II
Foreclosure & Economic Recovery Program
Okaloosa & Walton Counties
101 E. James Lee Blvd.
Crestview, FL 32536
(850) 589-7329

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-----Original Message-----
From: msmith@defaultlawfl.com [mailto:msmith@defaultlawfl.com]
Sent: Tuesday, November 23, 2010 1:26 PM
To: Amanda Bailey
Subject: Hearing Requests - Okaloosa

Good afternoon. On the following three cases, as far as I can tell and after checking the court docket, I can find no opposing counsel that I have to coordinate a hearing with. Can these be set at any time/date available before Judge Brace in Okaloosa County.

- > Case 09-1577 / Wells Fargo v. Anthony Regacho / Motion to Dismiss - F09031305
 - > Case 09-5629 / Wells Fargo v. James Bowness / Motion for Judicial Default - F09031305
 - > Case 08-3879 / Wells Fargo v. Donald Hunle / Motion for Judicial Default - F08056513 **there is counsel noted on clerks docket but this counsel is representing the defendant in their bankruptcy case only. I called counsel to verify.
- There are more but for now those files are on hold.

Thank you and have a great holiday weekend.

Mark T. Smith **
Hearings Coordinator
The Florida Default Law Group, PL
919 Corporate Lake Drive
Suite 300
Tampa, FL 33634
813.342.2200 ext 3057
813.251.1543 - Fax
msmith@defaultlawfl.com

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From: Amanda Bailey
To: Stephanie Butler
Subject: Cancellation of Hearings

Sent: Mon, 29 Nov 2010 10:42:00 GMT

Good Morning Stephanie,

Judge Brace requires a motion and order to show cause in order to cancel a hearing. Failure to comply with his requirement may result in the dismissal of the foreclosure action.


Thank you,

*Amanda Bailey
Court Program Specialist II
Foreclosure & Economic Recovery Program
Okaloosa & Walton Counties
101 E. James Lee Blvd.
Crestview, FL 32536
(850) 689-7329*

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From: [Alicia Wardlow](#)
To: [Amanda Bailey](#)
Subject: RE:

Sent: Fri, 22 Oct 2010 10:06:36 GMT

 [OCAD 2010 07.pdf \(239Kb\)](#)

Amanda,

Attached is a copy for your review.

-Alicia

Alicia Wardlow
Court Operations Manager
Okaloosa County Court Administration
(850) 609-4700 - Office
(850) 651-7725 - Fax

From: Amanda Bailey
Sent: Friday, October 22, 2010 10:03 AM
To: Alicia Wardlow
Subject: RE:

Hi Alicia,

I apologize, but is it possible for you to send me a copy of the foreclosure directive? I will not distribute any copies, but I don't think I have read the final version.

Thanks!

Amanda Bailey
Court Program Specialist II
Foreclosure & Economic Recovery Program
Okaloosa & Walton Counties
101 E. James Lee Blvd.
Crestview, FL 32536
(850) 689-7329

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From: Alicia Wardlow
Sent: Friday, October 22, 2010 9:54 AM
To: Judge Brown; Judge Grinsted; Judge Heflin; Judge Ketchel (Judge.Ketchel@FLCOURTS1.GOV); Judge Maney; Judge Remington; Judge Ward; Judge Brace
Cc: Amanda Bailey; Janet Gilbert; Anita L. Cantrall; Robin Wright; Judge Stone; Cheryl Bixel; Donna Fought; Eileen

Vanboxtel; Ellen Hyde; Frannie Natalie; Gwen Roth; Patricia May; Trisha Barnes

Subject:

Good morning everyone.

I understand you may be receiving some requests for copies of OCAD 2010-07 (Foreclosure Directive) through your offices. Judge Stone has asked that you forward any requests for copies of the directive to Court Administration. Anita or I will then provide a copy to the requestor. This will allow us to maintain an accurate record of recipients as well as uniformity in response. Thank you.

-Alicia

Alicia Wardlow
Court Operations Manager
Okaloosa County Court Administration
(850) 609-4700 - Office
(850) 651-7725 - Fax

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
IN AND FOR OKALOOSA COUNTY, FLORIDA

ADMINISTRATIVE DIRECTIVE OCAD 2010-7

WHEREAS, Okaloosa County is experiencing an unprecedented number of mortgage foreclosures and the influx of these cases is straining the capacity of the courts to manage them efficiently; and

WHEREAS, reductions in judicial branch funding in the State of Florida have resulted in the lack of funding for support and administrative staff, making the review of documentation submitted in connection with foreclosure summary judgments problematic; and

WHEREAS, the Okaloosa County Clerk of the Circuit Court has had a similar reduction in funding, resulting in the reduction of staff while at the same time having to provide services necessary to support the filing, disposition and judicial sale of foreclosures; and

WHEREAS, standardized procedures are required to facilitate efficient processing of foreclosure cases and verification that cases are ripe for final disposition; and

WHEREAS, Judges and the Clerk in Okaloosa County have had persistent difficulties communicating with parties filing foreclosure actions or their attorneys regarding logistical and efficiency issues, and this frustrates the orderly disposition of cases resulting in unnecessary delay and docketing congestion; and

WHEREAS, standard procedures for the filing of papers and pleadings are necessary to assist the Court and Clerk in the processing of large numbers of documents submitted in connection with actions for foreclose mortgages;

NOW, THEREFORE, it is ORDERED that the following procedures shall be in force in Okaloosa County on or after **October 1, 2010**;

This Administrative Directive regulates local procedures governing the filing of actions in Okaloosa County to foreclose residential and commercial mortgages on real property. Consequently, this Directive does not apply to independent actions to foreclose other interests in real property such as homeowner association liens, condominium or cooperative association liens, mechanic liens, governmental entity, tax or equitable liens.

An independent action is one that does not include, as a party, a person or entity foreclosing a commercial or residential mortgage in the same case.

However, when their clients are parties to a commercial or residential foreclosure, attorney's defending a commercial or residential foreclosure and attorneys representing homeowner associations, condominium or cooperative associations, and government entities with liens are required to file all defensive motions and pleadings in accordance with procedure set forth herein.

This directive does not regulate the filing of motions or pleadings in foreclosure cases by pro se litigants who are required to comply with all applicable Florida Rules of Civil Procedure.

I. Procedures Applicable to Foreclosure Actions

The following procedures are applicable to all parties represented by counsel or defending residential or commercial mortgage foreclosure actions in Okaloosa County regardless of the date the complaint was filed, and to attorneys who set for hearing foreclosure summary judgments or motions relating to such foreclosure cases on or after October 1, 2010.

A. Standard Form Final Judgment Required

All Final Judgments shall be based on Supreme Court Form 1.996(a), unless specifically directed otherwise by the assigned Judge. Any changes from the Supreme Court Form shall be emphasized so as to be promptly evident to the assigned Judge.

B. Procedures for Scheduling and Canceling Summary Judgment Hearings

Several law firms engaged in volume foreclosure filings have developed the practice of reserving hearing time for summary judgment before the motion is filed and have consistently failed to comply with Judges' requirements for conducting those hearings. This has resulted in the waste of valuable hearing time for other litigants when the motion is not forthcoming and the hearing is not canceled by the party. The following procedures are necessary to facilitate the efficient disposition of large numbers of foreclosure filings;

1. No Summary Judgment Hearings to be Scheduled before the filing of a Motion and Supporting Documents.

Hearing time for motions for summary judgments in foreclosure cases shall not be reserved on the Judges calendars until the motion, with complete supporting documentation and proposed judgment, proposed notice of sale and Clerk's sale fee, if not previously paid, is filed with the Clerk.

Judges will monitor compliance with this requirement and may cancel hearings that have been set without the prior filing of a motion. Sanctions also may be imposed for chronic disregard of this requirement.

2. Updating Costs and Affidavits After Summary Judgment Hearing is Scheduled

A complete foreclosure packet with such information as is currently available to plaintiff is required to have been filed prior to obtaining of hearing time. However, if circumstances change or additional costs are incurred after the acquisition of the hearing date, an amended cost affidavit and proposed final judgment should be filed with the Clerk accompanied by a Notice of Filing. Updated or amended documents are required to be in the Clerk's possession at least five (5) business days prior to the hearing.

3. All pleadings, including Summary Judgment Pleadings and Related Documents to be Sent to the Clerk's office not Judge's chambers

After the effective date of this directive, parties seeking any action by the Court shall transmit the pleadings and any supporting documentation to the Clerk.

The original Final Summary Judgment Package shall be hand delivered by counsel to the assigned Judge at the time of the hearing on the Motion for Summary Judgment.

Absent a direct request from the assigned Judge, no motions or supporting documents shall be sent to the Judges' chambers, nor are copies of these papers to be sent to chambers, nor shall they be delivered to the Judges' chambers by electronic or facsimile transmission.

4. Cancellation of Summary Judgment Hearings

Any request to cancel a Summary Judgment Hearing should be made as promptly as possible. This will make the hearing time available for other matters and provide all parties with timely notice.

Cancellations of Motion for Summary Judgment hearings should be few and good cause for same should be shown. All requests to cancel Motion for Summary Judgment hearings shall be in writing and except for good cause shown, shall be signed by the party requesting the cancellation. The motion shall be accompanied by a proposed order with copies and first class postage paid envelopes for all parties.

When the cancellation occurs shortly before the hearing, persons required to receive notice should be advised of the cancellation by the most expeditious means.

C. Foreclosure Sales

1. Payment of Clerk's Sale Fee

- a. With each foreclosure case filed on or after October 1, 2010 the Plaintiff shall, in addition to the required filing fee, pay the Clerk's sale fee at the time of filing.
- b. For foreclosure cases filed before October 1, 2010 the Clerk's sale fee shall be included as part of the motion for summary judgment package.
- c. With any motion which includes a request to reschedule a foreclosure sale the Clerk's sale fee and reopen fee, if required, shall be included as part of the motion package.

2. Notices of Foreclosure Sale

- a. All notices of foreclosure sale, in addition to the copies and envelopes required by the Rules of Civil Procedure and Rules of Judicial Administration, shall include a first class postage pre-paid envelope to the Newspaper, qualified pursuant to Florida Statutes Chapter 50, of the Plaintiff's choice.
- b. All notices of foreclosure sale, in addition to the contents required by Florida Statutes Chapter 45, shall include the following legend: **The newspaper is requested pursuant to the provisions of Administrative Directive OCAD 2010-7 to deliver the proof of publication directly to the Clerk of the Circuit Court of Okaloosa County. This legend shall be printed in no less than 14 point bold face type and be placed below the signature line for the Clerk on**

the notice of sale.

c. If upon receipt of a notice of foreclosure sale the Clerk of the Circuit Court determines that the required legend is missing the Clerk may, in the exercise of discretion, place the required legend on the notice of foreclosure sale.

3. Cancellation of Foreclosure Sales

a. No foreclosure sale may be cancelled except upon order from the assigned Judge or the Duty Judge if the assigned Judge is unavailable.

b. Supreme Court Form 1.996(b) shall be used when requesting to cancel and reschedule foreclosure sales.

c. Absent a motion to dismiss the action or based upon the Automatic Stay Provisions of the U.S. Bankruptcy Code, no motion to cancel a foreclosure sale shall be submitted which does not include provisions to reschedule the sale.

d. In the event it becomes necessary to cancel a foreclosure sale on short notice, the original motion to cancel and proposed order shall be filed with the Clerk. The motion will be delivered to the assigned Judge expeditiously and reviewed expeditiously, and a copy of the signed order will be faxed or emailed to counsel for the plaintiff and email notification provided to the Clerk of Court.

e. It is the obligation of counsel for the plaintiff to be certain that the motion is filed in a timely manner which is presumed to be not less than seven (7) days prior to the scheduled sale. It is further the obligation of the counsel for the Plaintiff to be certain a signed order cancelling the sale is presented to the Clerk with sufficient time for the Clerk to cancel the sale.

4. Conduct of Foreclosure Sales by Electronic Means

Florida Statute 45.031(10), authorizes the Clerk of Court to conduct the sale of real or personal property under an order or judgment by electronic means, and the Clerk of Court of Okaloosa County has utilized this procedure effective January 1, 2010.

The Clerk of the Court of Okaloosa County, in the exercise of discretion may conduct all pending mortgage foreclosure sales electronically pursuant to Florida Statute 45.031(10), upon proper notice being afforded to all effected parties.

D. Legal Standards for Summary Judgment to Be Followed

Parties seeking to foreclose a mortgage by summary judgment are required to establish through admissible evidence, that they hold the note and mortgage that is the subject of the action. This is a crucial element of standing. Documentation submitted with the motion must support the assertion of ownership. Mere allegations of ownership do not suffice. *BAC Funding Consortium, Inc. v Jean-Jacques*, 28 So. 3d 936 (Fla. 2d DCA 2010)

Moreover, in the typical case, to prevail on summary judgment there must be shown a clear chain of note ownership linking the originator of the loan to the party claiming ownership. *Verizgo v*

Bank of New York, 28 So. 3d 976 (Fla. 2d DCA 2010).

This linkage is frequently missing and is a major cause of denials of motions for summary judgment.

E. Complaints to Foreclose Residential Mortgages To Be Verified

On February 11, 2010, the Supreme Court amended Rule of Civil Procedure 1.110(b) requiring verification of mortgage foreclosure complaints involving residential property. The court gave the following reason for the new rule:

The primary purposes of this amendment are (1) to provide incentive for the plaintiff to appropriately investigate and verify its ownership of the note or right to enforce the note and ensure that the allegations in the complaint are accurate; (2) to conserve judicial resources that are currently being wasted on inappropriately pleaded "lost note" counts and inconsistent allegations; (3) to prevent the wasting of judicial resources and harm defendants resulting from suits brought by plaintiffs not entitled to enforce the note; (4) to give trial courts greater authority to sanction plaintiffs who make false allegations. *In Re: Amendments to the Florida Rules of Civil Procedure, No. SC09-1490, pp 3-4.*

Complaints filed in violation of this requirement before or after the effective date of this directive may be subject to dismissal *sua sponte* without prejudice to file a new action, and assigned Judges may require a new complaint, case number, and clerk's fee as a sanction for non-compliance.

F. Payment of Fees Due to Clerk of the Circuit Court to be attached to pleading at time of Filing

All fees due for any pleading shall be attached to the pleading at the time of filing the pleading with the Clerk of the Circuit Court.

II. CERTIFICATE OF COMPLIANCE WITH OCAD 2010-7

With each motion to which OCAD 2010-7 applies, Counsel shall file, at the same time the motion is filed, a certificate of compliance with the provisions of OCAD 2010-7, the form of which is attached hereto as Exhibit A. Filing of the certificate of compliance is a prerequisite to scheduling a hearing on any motion filed or any request for an ex parte order. The Certificate of Compliance shall be signed by Counsel as provided by Rule of Judicial Administration 2.515.

Failure to comply with the provisions of OCAD 2010-7 may subject the attorney signing the Certificate of Compliance to sanctions, including a citation of contempt and monetary sanctions.

III. CLERK OF THE CIRCUIT COURT MAY ASSIST IN THE ENFORCEMENT OF OCAD 2010-7

A. If upon receipt of a signed order the Clerk of the Circuit Court determines a lack of compliance with the provisions of OCAD 2010-7 the Clerk may, in the exercise of discretion, without docketing and recording the signed order, bring the matter to the attention of the assigned Judge for further action.

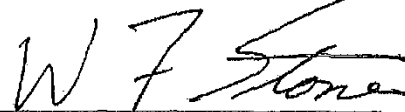
B. If upon receipt of a pleading which requires a payment of a fee and the fee is not attached to the pleading or has not otherwise been paid, the Clerk of the Circuit Court may, in the exercise of discretion, bring the matter to the attention of the assigned Judge for further action.

C. For each complaint, or any amended complaint, for foreclosure on residential real property filed after the effective date of OCAD 2010-7, if the Clerk of the Circuit Court determines that the complaint, or any amended complaint, is not verified as required by Rules of Civil Procedure 1.110(b), the Clerk may, in the exercise of discretion, bring the matter to the attention of the assigned Judge for further action.

IV. Effective Date

Except as otherwise provided, the procedures set forth in this Administrative Directive shall be effective October 1, 2010.

DONE AND ORDERED in Okaloosa County, Shalimar, Florida, this 1 day of October, 2010.



WILLIAM F. STONE
Administrative Judge

Conformed copies furnished to:

Honorable Terry D. Terrell, Chief Judge
All Circuit and County Court Judges, Okaloosa County
Honorable Don W. Howard, Clerk of Court, Okaloosa County
Magistrate Mary Polson
State Attorney's Office, Shalimar and Crestview
Public Defender's Office, Shalimar and Crestview
Probation Offices, Shalimar and Crestview
All Okaloosa County Law Enforcement Agencies
Robin Wright, Court Administrator
Alicia Wardlow, Okaloosa County Court Operations Manager
Official Court Reporters, Okaloosa County
President of the Okaloosa-Walton Bar Association

DON W. HOWARD
CLERK OF COURT

BY: 
Deputy Clerk

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR OKALOOSA COUNTY, FLORIDA

Plaintiff, _____
v. Case No. _____
Defendant
_____ /

**CERTIFICATE OF COMPLIANCE WITH
ADMINISTRATIVE DIRECTIVE OCAD 2010-7**

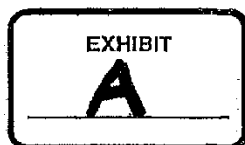
(Must be filed with Motion for Default Judgment,
Motion for Summary Judgment, Motion to cancel
or continue Summary Judgment or Trial, Motion to
Cancel Sale, Motion to Reschedule Sale)

The undersigned attorney acknowledges that he/she has read Administrative Directive OCAD 2010-7
and the undersigned attorney certifies compliance with the provisions of Administrative Directive
OCAD 2010-7, in connection with the filing of _____ [Detail Motion] _____ on
_____, 20__.

Further the undersigned attorney specifically acknowledges and understands that Paragraph II of
Administrative Directive OCAD 2010-7 provides: **Failure to comply with the provisions of OCAD
2010-7 may subject the attorney signing the Certificate of Compliance to sanctions, including
a citation of contempt and monetary sanctions.**

Signed on _____ [Date] _____.

[signature block for certifying attorney]
[certificate of service]



CHIEF JUDGE ADMINISTRATIVE MEETING

January 27, 2010

A G E N D A

- I. Scheduling for Strategic Planning Meeting for each County and Circuit Wide
- II. Foreclosure - McIver
- III. FLAG - Judge Jones
- IV. Magistrate Workload
- V. Mortgage Foreclosure Mediation Program Model Administrative Order Revisions

CHIEF JUDGE ADMINISTRATIVE MEETING

February 3, 2010

A G E N D A

- I. Administrative Orders
- II. MAO Mortgage Foreclosure
- III. Administrative Registrations

CHIEF JUDGE ADMINISTRATIVE MEETING

February 17, 2010

A G E N D A

- I. Residential Mortgage Foreclosure Mediation Model Administrative Order
- II. County Court Bond Estreatures
- III. National Domestic Violence Court Technical Assistance Webinar

CHIEF JUDGE ADMINISTRATIVE MEETING

May 12, 2010

A G E N D A

- I. Court Reporting Services Plan
- II. Duty Judge Draw/Duty Judge
- III. Electronic Sales by Clerk on Mortgage Foreclosure Cases
- IV. Holiday Schedule for 2011

*****Please bring materials with you to the meeting.*****

CHIEF JUDGE ADMINISTRATIVE MEETING

June 23, 2010

A G E N D A

- I. Division "W" Administrative Order
- II. Courtroom P.A. System
- III. Court Reporter Availability if CourtSmart Fails
- IV. Court Holiday Schedule

*****Please bring materials with you to the meeting.*****

CHIEF JUDGE ADMINISTRATIVE MEETING

June 30, 2010

A G E N D A

- I. Division "W" Administrative Order
- II. Courtroom P.A. System
- III. Duty Judge Pager/Cell Phone

*****Please bring materials with you to the meeting.*****

CHIEF JUDGE ADMINISTRATIVE MEETING

July 7, 2010

A G E N D A

- I. Docket Coverage for Division D - *Robin*
- II. Senior Judge Coverage Request - Judge John Brown - *Keri*
- III. Senior Judge Usage Policy - *Keri*
- IV. Foreclosure Mediators from Outside the Circuit - *Judge Rasmussen*

*****Please bring materials with you to the meeting.*****

CHIEF JUDGE ADMINISTRATIVE MEETING

July 21, 2010

A G E N D A

- I. Combined Duty Schedule for Escambia and Santa Rosa Counties
(*Judge Rasmussen*)
- II. State Attorney and Public Defender Use of Computers in Courtrooms
(*Judge Rasmussen*)
- III. Weekend First Appearance - Digital Recording (*Robin*)
- IV. Update on RMFM Program Staffing and Scheduling (*Judge Terrell*)
- V. Drafting AD on Winding Down and Transferring Division "B" Cases
(*Judge Terrell*)
- VI. Okaloosa's Termination of Lack of Prosecution Notices (*Judge Terrell*)

*****Please bring materials with you to the meeting.*****

CHIEF JUDGE ADMINISTRATIVE MEETING

August 4, 2010

A G E N D A

- I. Update on RMFM Program Staffing and Scheduling (*Judge Terrell*)
- II. Escambia Clerk's Proposal on Transfer of Cases to Division "W"
(*Judge Terrell*)
- III. Proposed Administrative Directive Regarding Division Reassignment
(*Judge Rasmussen*)

*****Please bring materials with you to the meeting.*****

CHIEF JUDGE ADMINISTRATIVE MEETING

September 15, 2010

A G E N D A

- I. Update on RMFM Program Staffing and Scheduling (*Judge Terrell*)
- II. Clerk's Review of Motor Vehicle and Property Records -
Determination of Indigent Status, Section 27.52, *Florida Statutes*
(*Judge Rasmussen*)
- III. Agenda for Circuit-wide Administrative Judges' Meeting - Friday,
September 17th (*Keri Igney*)

*****Please bring materials with you to the meeting.*****

CHIEF JUDGE ADMINISTRATIVE MEETING

September 29, 2010

A G E N D A

- I. Clerk's Review of Motor Vehicle and Property Records -
Determination of Indigent Status, Section 27.52, *Florida Statutes*
(*Judge Rasmussen*)
- II. Foreclosure Backlog Update (*Judge Terrell*)
- III. Judicial Facilities' Hours of Operation (*Robin Wright*)
- IV. Judicial Ride Along (*Judge Terrell*)

*****Please bring materials with you to the meeting.*****

CHIEF JUDGE'S ADMINISTRATIVE MEETING

Wednesday - October 6, 2010

AGENDA

- I. Foreclosure Backlog Update
- II. Clerk's Response to Public Access to Judicial Branch Records -
Amendment to Administrative Order No. 1997-91
- III. Info only: Update on Indigency Determination by Clerk
- IV. Proposed Veterans' Court at VA Clinic East, NAS Hospital, Hwy. 98
October 22, 2010 at 8:00 a.m.

CHIEF JUDGE ADMINISTRATIVE MEETING

October 13, 2010

A G E N D A

- I. Update on RMFM Program Staffing and Scheduling (*Judge Terrell*)
- II. Foreclosure Backlog Update (*Judge Terrell*)
- III. FLAG Chair (*Robin Wright*)

*****Please bring materials with you to the meeting.*****

CHIEF JUDGE ADMINISTRATIVE MEETING

October 20, 2010

A G E N D A

- I. Foreclosure Backlog Update (*Judge Terrell*)

*****Please bring materials with you to the meeting.*****

CHIEF JUDGE ADMINISTRATIVE MEETING

November 3, 2010

A G E N D A

- I. Foreclosure Backlog Update (*Judge Terrell*)

*****Please bring materials with you to the meeting.*****

CHIEF JUDGE ADMINISTRATIVE MEETING

November 10, 2010

A G E N D A

- I. Foreclosure Backlog Update (*Judge Terrell*)

*****Please bring materials with you to the meeting.*****

CHIEF JUDGE ADMINISTRATIVE MEETING

November 17, 2010

A G E N D A

- I. Update on RMFM Program Staffing and Scheduling (*Judge Terrell*)
- II. Foreclosure Backlog Update (*Judge Terrell*)
- III. Courtroom DNA Collection Procedures (*Judge Rasmussen*)

*****Please bring materials with you to the meeting.*****

CHIEF JUDGE ADMINISTRATIVE MEETING

December 8, 2010

AGENDA

- I. Foreclosure Backlog Update (*Judge Terrell*)
- II. Collins' Center Reporting (*Judge Rasmussen*)
- III. Resign to Run (*Robin Wright*)
- IV. Court Security (*Robin Wright*)
- V. Finalize Circuit Wide Administrative Judges' December 13th Meeting Agenda (*Keri Igney*)

*****Please bring materials with you to the meeting.*****

CHIEF JUDGE ADMINISTRATIVE MEETING

December 15, 2010

AGENDA

- I. Update on RMFM Program Staffing and Scheduling (*Judge Terrell*)
- II. Foreclosure Backlog Update (*Judge Terrell*)
- III. Local List of Attorneys for Appointment in Foreclosure Cases as an Attorney ad Litem (*Judge Terrell*)

*****Please bring materials with you to the meeting.*****

CHIEF JUDGE ADMINISTRATIVE MEETING

January 5, 2011

A G E N D A

- I. Foreclosure Backlog Update (*Judge Terrell*)
- II. Finalize Dress Code - Webpage

*****Please bring materials with you to the meeting.*****

CHIEF JUDGE'S ADMINISTRATIVE MEETING

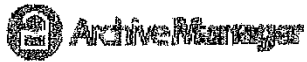
January 12, 2011

A G E N D A

- I. Update on RMFM Program Staffing and Scheduling (*Judge Terrell*)
- II. Foreclosure Backlog Update (*Judge Terrell*)
- III. Corinne Whitlock - Grant for New Health Program at Jail (*Judge Terrell*)
- IV. Request for Letter of Participation with Harbor House Group, Inc. (*Judge Terrell*)
- V. Escambia Dependency Attorney Registry List (*Keri Igney*)

*****Please bring materials with you to the meeting.*****

Chief Judge Terry Terrell



From: [Keri Igney](#) **Sent:** Wed, 10 Mar 2010 09:15:40 GMT
To: [Judge Santurri](#); [Judge Rasmussen](#); [Judge Wells](#); [Judge Stone](#);
CC: [Judge Terrell](#); [Frannie Natalie](#); [Robin Wright](#); [Keri Igney](#); [Lisa Mabry](#); [Glenda Calvasina](#); [Dell Adams](#);
Subject: CIRCUITWIDE ADMINISTRATIVE JUDGES' MEETING

[CW ADMIN MTG MARCH 12, 2010.wpd](#) (4Kb)

Judges:

I enclose the proposed agenda for Friday's circuitwide administrative judges' meeting.

If you have any agenda items not covered in your COUNTY UPDATE, please let me know before close of business today.

I will be distributing the agenda and attachments to all Judges on Thursday, March 11.

Thank you.

Keri

Keri Igney
Administrative Office of the Chief Judge
First Judicial Circuit
850.595.4451
Keri.Igney@FLCourts1.gov

CIRCUITWIDE ADMINISTRATIVE JUDGES MEETING

Friday, March 12, 2010

12:00 noon

Via Video Conferencing

AGENDA

- Residential Mortgage Foreclosure Administrative Order Judge Terrell
- Strategic Planning Meeting Judge Terrell
 - OSCA - Bateman/Youchuck
- Pretrial Release - Proposed Bills (*see attached*) Judge Terrell
- County Updates:
 - ◆ Escambia County Judge Rasmussen
 - ◆ Okaloosa County Judge Stone
 - ◆ Santa Rosa County Judge Santurri
 - ◆ Walton County Judge Wells

Next Circuitwide Administrative Judges' Meeting:

June 4, 2010

Remaining Meeting schedule:

September 17, 2010

December 3, 2010



From: Judge Terrell

Sent: Thu, 18 Mar 2010 17:23:00 GMT

To: Justice Administration Section

Subject: Response to Request for Program Information

2009-18 MANAGED MEDIATION.doc (52Kb) 1st Cir MAO Final - FINAL 2.26.10 FINAL.docx (417Kb)

Circuit No: 1st

Primary judge or administrator responsible for overseeing program in your circuit: Terry D. Terrell, Chief Judge

Have you recruited a PM yet? NO ____; YES ; if yes: name of PM: Collins Center; actual or projected start date: March 29, 2010

If you have a managed mediation program in operation, please send a copy of your implementing AO.

Did you use or are you planning to use an RFP? NO ; YES ____; If yes, please send a copy.

Are you using or planning to use a contract between your circuit and the PM: NO ____; YES ; If yes, please provide a copy.

This Circuit has a pilot program in operation since April 1, 2009, which will be replaced as the Model Administrative Order (MAO) from Supreme Court becomes fully operational. Please note that slight refinements were made to the MAO by the First, Eleventh, and Nineteenth Circuits to provide greater clarity of process and responsibility.

In an effort to respond as quickly as possible, final drafts of both the Administrative Order for the pilot project and the new Administrative Order based on the MAO are attached. Signed and dated copies may be retrieved from the First Judicial Circuit Website.

Terry D. Terrell
Chief Judge, First Circuit

Attention: The information contained in this E-mail message may be privileged and confidential under Fla.R.Jud.Admin 2.420 and information intended only for the use of the individual(s) named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly prohibited. If you have received this communication in error, please contact the sender by reply E-mail and destroy all copies of the original message. Thank you.

*AO 2010-01
attached.
AO previously
provided to
you. Peli
1.7.11*



From: rwrightfic@vzw.blackberry.net

Sent: Fri, 07 May 2010 11:14:36 GMT

To: [Judge Terrell](#)

Subject: Fw: Foreclosure and Economic Recovery Program Allocations

[ForeclosureandEconomicRecovery Distribution.xls \(29Kb\)](#) [Foreclosure and Economic Recovery Program.pdf \(17Kb\)](#)

Let's talk about this on Monday. I'm in Okal for a judges meeting today.

Sent from my Verizon Wireless BlackBerry

From: Heather Thuotte-Pierson <piersonh@flicourts.org>

Date: Fri, 7 May 2010 11:27:10 -0400

To: Trial Court Chief Judges<TrialCourtChiefJudges@flicourts.org>; Trial Court Administrators<TrialCourtAdministrators@flicourts.org>

Cc: Lisa Goodner<goodnerl@flicourts.org>; Kristine Slayden<slaydenk@flicourts.org>; Sharon Buckingham<buckings@flicourts.org>; Charlotte Jerrett<jerrettc@flicourts.org>; Dorothy Wilson<burked@flicourts.org>; Arlene Johnson<johnsona@flicourts.org>; Patty Harris<HarrisP@flicourts.org>; Theresa Westerfeld<westerfeldt@flicourts.org>; Elizabeth Garber<garbere@flicourts.org>; Greg Youchoc<youchocg@flicourts.org>; Gary Phillips<phillips@flicourts.org>

Subject: Foreclosure and Economic Recovery Program Allocations

Good morning,

The Legislature appropriated funding for the Foreclosure and Economic Recovery Program in the amount of \$5,955,606 for FY 2010/11 to the trial courts. These non-recurring funds will be used to provide temporary resources in the trial courts to eliminate backlog in the civil areas. We will be sending information on target backlog reduction goals as well as parameters for implementation and clerk involvement in this program after the May 20, 2010 Trial Court Budget Commission meeting.

The amount of funding authority appropriated for this program is less than the amount originally requested, thus the estimated allotment for each circuit also has been adjusted. You will find the estimated allocation by circuit along with estimated backlog cases in the attached PDF file – Foreclosure and Economic Recovery Program. **Considering your adjusted allocation, please indicate, using the attached ForeclosureandEconomicRecovery_ Distribution spreadsheet, how you would like the funds for your circuit distributed – by category and element.** For every element (General Magistrates and/or Senior Judges, Case Managers, General Magistrate/Senior Judge Admin Support and Mediation Admin Support) specify the dollar amount and category in which the funds should be allocated - OPS, contracted services and/or expenses dollars. To allow for maximum flexibility, funds may be expended in one or all of the elements.

As a reminder, the funding methodology developed for this proposal is based on the number of backlogged cases (in the civil areas) in each circuit. A ratio of one General Magistrate, one Case Manager and two Administrative Support positions for every 15,000 backlogged cases was applied to estimate need. One Administrative Support position is dedicated to mediation for the coordination of civil cases covered under this program with the exclusion of residential homestead mortgage foreclosure cases handled through the managed mediation program. The annual salaries used to calculate the allocation amounts were approximately: \$79,688 for General Magistrates, \$39,126 for Case Managers, and \$26,090 for Admin Support.

Additional information is also needed again from the circuits as to how economic recovery resources will be

deployed circuit-wide. Court leadership would like to be able to share this information with the clerks so they can plan accordingly, since they were appropriated \$3.6 million to support our initiative. Please provide:

-The amount of **magistrate/senior judge FTE's** that will be assigned in **each county** based on the expected workload from the backlogged cases. *Note: Single county circuits can ignore this question.*

-If you have multiple **magistrate/senior judge FTE's** in the proposal, what is the maximum number of courtrooms that will be scheduled at any one time in **each county**?

As usual we are under a tight timeframe. Please respond by **Wednesday, May 12th C.O.B.**

Please let me know if you have any questions or concerns.

Thanks,
Heather

Heather Thuotte-Pierson
Office of the State Courts Administrator
Court Statistics Consultant
(850) 410-3376
piersonh@flcourts.org

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Foreclosure and Economic Recovery Program (05/2010)

Circuit _____

General Magistrates				
OPS	Contracted Services	GM/Senior Judge Expense	Senior Judge Days @ \$350 a day	Total
				\$0.00

Case Managers			
OPS	Contracted Services	Expense	Total
			\$0.00

General Magistrate/Senior Judge Admin Support			
OPS	Contracted Services	Expense	Total
			\$0.00

Mediation Admin Support			
OPS	Contractual Services	Expense	Total
			\$0.00

**Foreclosure and Economic Recovery
Fiscal Year 2010/11 Proposed Allocation**

Circuit	Estimated Number of Backlog Cases (FY 2006-07 to FY 2010-11) ¹	FY 2010/11 Proposed Allocation
1	17,739	\$106,365
2	7,134	\$106,365
3	2,356	\$64,261
4	30,144	\$212,729
5	28,511	\$212,729
6	51,993	\$317,752
7	27,851	\$212,729
8	3,404	\$106,365
9	65,989	\$425,457
10	15,992	\$106,365
11	126,197	\$862,053
12	37,077	\$212,729
13	55,143	\$427,504
14	6,118	\$106,365
15	86,380	\$646,540
16	3,650	\$106,365
17	86,912	\$646,540
18	45,850	\$319,094
19	27,532	\$212,729
20	59,091	\$425,458
Total	785,063	\$5,836,494
2% Expense Contingency		\$119,112
Economic Recovery Funding Authority		\$5,955,606

¹ Estimated Number of Backlog Cases calculated for contract and indebtedness, real property/mortgage foreclosure, and county civil (\$5,001 to \$15,000) cases. Backlog cases were determined by subtracting the number of dispositions from the number of filings. The official trial court statistics were used for fiscal year 2006-07 to 2008-09, annualized data (July to October) were used for fiscal year 2009-10, and certification

² Estimates that 42% of backlog cases can be processed with resources funded through the Foreclosure and Economic Recovery Proposal



From: [Judge Rasmussen](#)
To: [ESC-JA's](#); [ESC-Judges](#);
CC: [Robin Wright](#)
Subject: Mortgage Foreclosure Sales

Sent: Thu, 20 May 2010 11:51:46 GMT

I was advised last week that the Clerk of Court in Escambia County will begin conducting all mortgage foreclosure sales electronically pursuant to section 45.031(10), Fla. Statutes, effective June 14, 2010. The Clerk believes this will greatly expand the pool of bidders for publically sold properties. For persons who do not own a computer and wish to bid on a property, the Clerk will provide public terminals for their use. This is a web based system and the Clerk is going to provide training sessions for using this bidding process and the web site. The same system is already being used in Okaloosa and Walton Counties as well as many other counties throughout the state.

If anyone would like additional information about the system or process or would like to see a demonstration of how the on-line bidding process will be conducted, you may contact Cheri High in circuit civil. For judgments that have already been entered reflecting sales dates after June 14, 2010 by the traditional method of sale, the Clerk has requested that I enter an Administrative Directive allowing those sales to be conducted electronically. Unless I hear otherwise from a particular judge, it is my intent to enter that order to facilitate the process. It will be the Clerk's responsibility to make sure that all affected parties receive notice of this change.



From: [Kristine Slayden](#) **Sent:** Fri, 21 May 2010 13:39:55 GMT
To: [Trial Court Administrators](#); [Trial Court Chief Judges](#);
CC: [Kristine Slayden](#); [Lisa Goodner](#); [Sharon Bosley](#); [Trial Court Budget Commission](#); [Charlotte Jerrett](#); [Sharon Buckingham](#); [Heather Thuotte-Pierson](#); [Dorothy Wilson](#); [Theresa Westerfield](#); [Gary Phillips](#);
Subject: Foreclosure and Economic Recovery Non-recurring Funding FY 2010/11

[ForeclosureandEconomicRecovery FundingPlans Updated05212010.pdf \(10Kb\)](#) **62% Estimated**
[RPMF Backlog.pdf \(14Kb\)](#) [Foreclosure and Economic Recovery Responses from Circuits May 2010 v2.pdf \(20Kb\)](#)

Chief Judges/Trial Court Administrators – The Trial Court Budget Commission met yesterday and approved the following 5 issues for the implementation of the Foreclosure and Economic Recovery Funding for FY 2010/11. Any adjustments to your circuit's plan based on these decisions need to be emailed to Dorothy Wilson at burked@flcourts.org by COB Tuesday, May 25th. Please refer to the bottom of this email for further submission instructions.

Please note that the allocations will be provided to the Chief Justice and the Legislature for final approval.

Issue 1: FY 2010/11 Funding Allocations Approved

- 1) Approved the FY 2010/11 circuit allocations for the Foreclosure and Economic Recovery Funding, with an adjustment to the contracted services category for case management and administrative support for the 10th, 12th, and 15th circuits (due to restrictions with using contractual dollars). The revised allocation chart is attached.
- 2) Approved effective date for the implementation of the circuits' plans so resources can be deployed on July 1, 2010, using existing FY 2009/10 funds for advertising if necessary.

Issue 2: Types of Cases and Disposition Goals Approved

- 1) Approved real property/mortgage foreclosure cases as the focus of this initiative. If a circuit has cleared all real property/mortgage foreclosure cases from backlog, the circuit may request in writing to the TCBC Chair, with a copy to the TCBC Budget Management Committee Chair, and to the State Courts Administrator, asking to use the funds to handle contracts and indebtedness cases, and county civil cases valued from \$5,001 to \$15,000.
- 2) Approved a targeted goal for the disposition of backlog cases of 62%, which corresponds to the reduction in funding (\$9.6 million proposal reduced down to \$6.0 million appropriation is a 38% reduction).

The attached chart indicates the targeted backlog reduction for the **estimated** Real Property/Mortgage Foreclosure backlog cases for each circuit. The actual number of backlog cases will need to be produced at the beginning of the initiative for tracking purposes.

Issue 3: Budget Policy Considerations Approved

- a) In order to comply with legislative intent, any expenditure of any type utilizing this funding is strictly limited to direct support of the backlog reduction of the approved case types listed in Issue 2.

- b) In order to ensure that senior judges who are assigned to the Foreclosure and Economic Recovery initiative are paid with the appropriate funds, the current senior judge application will be modified to allow circuits to specify from which funding source the senior judge should be paid. The Trial Court Administrators are responsible for ensuring that the information is reported properly.
- c) Expenditures from the Expense category are limited to intra-circuit travel for staff, intra- and inter-circuit travel for Senior Judges, consumable office supplies, postage, copying, printing and reproduction. To maximize the Expense allotment, circuits are encouraged to use existing resources or surplus furnishings for any office furniture needs for OPS staff and/or Senior Judges. Subscriptions and the like are not allowable expenditures for this funding, neither are computers or other communication devices as those items are a county funding responsibility.
- d) A contingency for the Expense category was approved in the original proposal and factored into the appropriated amount. In order to access these contingency funds, a circuit must have exhausted its Foreclosure and Economic Recovery Expense allotment. Requests for additional Expense are to be made in writing to the TCBC Chair, with a copy to the TCBC Budget Management Committee Chair, and to the State Courts Administrator. The request must provide a complete, detailed explanation of how Expense funding came to be exhausted, what steps were taken to alleviate the impending shortfall, the amount requested and how that amount was calculated.

Issue 4: Funding/Plan Monitoring Approved

- a. The Budget Management Committee (BMC) will monitor expenditures on a monthly basis to ensure that resources are only being used for the purpose of backlog reduction for the approved case types. In addition, the BMC will monitor case event data to ensure that expenditures correlate with the TCBC approved activities.
- b. The Supreme Court Inspector General will also be reviewing the Foreclosure and Economic Recovery initiative for potential inclusion in the branch's FY 2010/11 audit plan.

Issue 5: Clerk Assistance Approved

Information on in-courtroom resources (general magistrates and senior judges) that will be assigned in each county and the maximum number of courtrooms that will be scheduled at any one time in each county will be shared with clerks once it has been finalized (see attached chart – please update this information, if needed). The chief judge in each circuit should work with their clerks to ensure the clerks appropriately support their plan. These plans need to be shared with the Office of the State Courts Administrator so that the legislature can be informed of the collaborative work on this issue. In addition, the TCBC approved the requirement that the clerks of court provide data support for this initiative.

Two other issues on performance measurement and FY 2011/12 Legislative Budget Request were postponed until the June 4th TCBC meeting.

Directions:

If the decisions above require you to modify your plan allocations, please make the adjustments and notify Dorothy Wilson of the specific changes to the allocation categories by email at burked@flcourts.org by COB, Tuesday, May 25, 2010. If no changes are needed, please indicate that in an email to Dorothy. In addition, if any changes in your allocations require a revision to the in courtroom resources, please provide that information also.

Listed below are the job classes and hourly rates for OPS positions that were used in the original proposal for the Foreclosure and Economic Recovery Funding. The TCBC approved the circuit allocations with direction to the circuits that they hire within these guidelines.

Element	Position	Maximum rate
Magistrates:	Magistrate	\$35.48 hourly
Case Management: and Pinellas	Court Program Specialist II	\$17.36 hourly
	Court Program Specialist I	\$14.58 hourly
	Court Program Specialist I	\$15.40 hourly w/ CAD – Hillsborough
Monroe, Palm Beach	Court Program Specialist I	\$15.40 hourly w/ CAD – Broward, Dade,
Admin. Support: and Pinellas	Senior Secretary	\$11.89 hourly
	Senior Secretary	\$12.10 hourly w/ CAD – Hillsborough
	Senior Secretary	\$12.48 hourly w/ CAD – Broward,
Dade, Monroe, Palm Beach		

This amount does not include the 7.65% FICA that needs to be added to the hourly rate.

Lastly, some circuits have already developed plans and position descriptions for the implementation of this initiative. You may want to check with our colleagues if you need some assistance in developing your own plan.

Please let me know if you have any questions. Kris

Kris Slayden
 Research and Data
 Office of the State Courts Administrator
 Florida Supreme Court
 500 S. Duval Street
 Tallahassee, Florida 32399
 850-922-5106 (wk)
 850-556-2335 (cell)
 850-414-1342 (fax)

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From: Judge Terrell **Sent:** Sun, 30 May 2010 13:53:00 GMT
To: John Dew
CC: Robin Wright; Kristine Slayden; Don Howard; Ernie Lee Magaha (emagaha@clerk.co.escambia.fl.us); Martha Ingle; Mary Johnson;
Subject: RE: Foreclosures

Mr. Dew,

Thank you for your input. This issue is being addressed forthwith, and an equitable distribution of available funds will be accomplished to address the mortgage foreclosure backlog issue with the able assistance of all the clerks in the First Circuit.

TDT

From: John Dew [mailto:JohnDew@flccoc.org]
Sent: Friday, May 28, 2010 3:58 PM
To: Judge Terrell
Cc: Kristine Slayden
Subject: Foreclosures

Good Afternoon Judge Terrell.

Please find attached a request from Clerk Howard Forman, Chair of the Clerk of Court Operations, for your assistance. The Corporation is responsible for determining the amount of resources to provide to Clerks for the purpose of helping move backlogged foreclosure cases. Please call me at (850) 386-2223 if you have any questions.

Thank you in advance.

John Dew
CCOC Executive Director

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From: [Judge Brown](#) **Sent:** Mon, 18 Oct 2010 13:56:00 GMT
To: [Judge Terrell](#)
Subject: RE: New Publication Announcement from Judge Mark King Leban, Chair, FCEC Publication Committee

Thank you Terry, very good.

JB

John T. Brown
 Circuit Court Judge
 1250 N. Eglin Parkway, Suite C-125
 Shalimar, Florida 32579
 OFFICE (850) 651-7470
 FAX (850) 609-3073

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From: Judge Terrell
Sent: Thursday, October 14, 2010 11:35 AM
To: Judge Parnham; Judge Brace; Judge Allen; Judge Bell; Judge Bergosh; Judge Billbrey; Judge Boles; Judge Brown; Judge Dannheisser; Judge Geeker; Judge Green; Judge Grinsted; Judge Heflin; Judge Hilliard; Judge Johnson; Judge Jones; Judge Joyce Williams; Judge Ketchel; Judge Kinsey; Judge KL Williams; Judge Laporte; Judge Maney; Judge MGoodman; Judge Miller; Judge Nickinson; Judge Nobles; Judge Rasmussen; Judge Remington; Judge RGoodman; Judge Rimmer; Judge Santurri; Judge Shackelford; Judge Simon; Judge Stone; Judge Swanson; Judge Ward; Judge Wells
Cc: ESC-JA's; OKA-JA's; SRA-JA's; WAL-JA's; Robin Wright; Janet Gilbert
Subject: FW: New Publication Announcement from Judge Mark King Leban, Chair, FCEC Publication Committee

FYI,

Attached is just a little light reading for those interested in the topic.

TDT

From: Melissa Henderson [<mailto:HendersM@flcourts.org>]
Sent: Thursday, October 14, 2010 11:10 AM
To: Trial Court Chief Judges; Trial Court Administrators
Cc: Susan Leseman; OSCA-JUDED; Blan Teagle
Subject: New Publication Announcement from Judge Mark King Leban, Chair, FCEC Publication Committee

To: Chief Judges and Trial Court Administrators

From: Judge Mark King Leban, Chair, Florida Court Education Council's Publications Committee

Re: New Publication: Residential Foreclosure Bench Book

The Publications Committee of the Florida Court Education Council is pleased to announce the posting of the *Residential Foreclosure Bench Book* in the Court Education Resource Library on the Florida State Courts intranet. The *Residential Foreclosure Bench Book* was written by the Eleventh Circuit's Judge Jennifer Bailey and Assistant General Counsel Doris Bermudez-Goodrich. Used for a recent judicial education course for judges assigned to hear foreclosure cases, this bench book presents readers with the nuts and bolts of current foreclosure law and procedures.

In addition to this bench book, the Court Education Resource Library, developed by OSCA's Court Education Section and Publications Unit, contains a plethora of judicial education materials, among them, court publications (benchguides, bench books, toolkits, and case summaries); court education program materials; and other useful resources (a catalog of books, manuals, and other publications, including materials by state and national organizations).

A PDF of the bench book is attached, but you can also access it from the Court Education Resource Library, at https://intranet.flcourts.org/osca/Judicial_Education/Library/librarymain.shtml (As the bench book will be periodically updated to reflect changes in foreclosure law and procedure, please visit the site for update notifications.)

Please share this information with judges and court staff who are handling residential mortgage foreclosure cases.

If you have any questions, contact Susan Leseman, OSCA Publications Attorney, at (850) 922-5085 or lesemans@flcourts.org

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From: Judge Terrell

Sent: Wed, 20 Oct 2010 09:48:50 GMT

To: Judge Brown

Subject: RE: Thoughts re: Gaetz

John,

Your observations are among the initiatives we are implementing and will report to the Senator which are improving efficiencies internally in the court system. Thanks for your thoughts on these developments. We are all looking forward to the suggestions on case management and orders in civil cases, as circuit uniformity, where possible, will benefit the bench and the bar, let alone the litigants.

TDT

From: Judge Brown

Sent: Wednesday, October 20, 2010 9:32 AM

To: Judge Terrell

Subject: Thoughts re: Gaetz

Terry:

Before I move on after our teleconference yesterday, I thought I would give you a few ideas:

The Judiciary is very interested in saving money and we have been seeking to do so as follows:

The longer a case stays open the more money it sucks into it from the Judiciary, the Public Defender, the State Attorney, and the Clerk's Office. Judges cannot control the number of cases which are opened and filed, but the Judges can be the gatekeeper or conduit to help get the cases closed within the bounds of justice.

We have been seeking to shorten the time for a criminal case to get to trial by using CourtSmart to be more efficient with time versus requiring a subsequent hearing. By using CourtSmart in more courtrooms and have more secure courtrooms in the new courthouse, this will allow us to have more hearings which are substantive rather than seeking to have some hearings in our chambers where not all of the substantive business may be conducted under the criminal rules of procedure.

We are making the requirements for mortgage foreclosure actions more stringent so that the hearings are more productive and move the case forward and dispose of them quicker.

We are seeking to make the lack of prosecution procedures more efficient and timely to dispose of inactive cases.

The Judges are seeking to assess the statutory costs and fines consistently and in a more uniform manner, even when a Florida Statute may appear to be ambiguous, so that the fines and costs are legally assessed.



We are preparing a Civil Case Management Order that may be used throughout the Circuit and this uniform order should move cases forward.

In an effort to cut down on requiring more venires when they will not be needed because the case pleas out on the Monday morning of trial week, some judges are stating that they will not accept pleas after noon on the Friday immediately before jury trial week unless the plea will be to the bench or straight up.

Just some thoughts Terry. You may wish to ask the other judges for similar brain storming in writing so you can see if you wish to pursue any of their thoughts.

JB

John T. Brown
Circuit Court Judge
1250 N. Eglin Parkway, Suite C-125
Shalimar, Florida 32579
OFFICE (850) 651-7470
FAX (850) 609-3073

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From: [Judge Terrell](#)

Sent: Wed, 20 Oct 2010 09:50:00 GMT

To: [Robin Wright](#)

Subject: FW: Thoughts re: Gaetz

These suggestions can be included in the draft of comments to be sent to the delegation. Please have staff start putting a draft together.

From: Judge Brown

Sent: Wednesday, October 20, 2010 9:32 AM

To: Judge Terrell

Subject: Thoughts re: Gaetz

Terry:

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We are seeking to make the lack of prosecution procedures more efficient and timely to dispose of inactive cases.

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Just some thoughts Terry. You may wish to ask the other judges for similar brain storming in writing so you can see if you wish to pursue any of their thoughts.

John T. Brown
Circuit Court Judge
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From: Judge Brown **Sent:** Thu, 21 Oct 2010 11:13:35 GMT
To: Judge Stone; ESC-Judges; OKA-Judges; SRA-Judges; WAL-Judges;
Subject: RE: More Foreclosure News Including sworn statement from Stern and Watson employees

So after reviewing the three sworn statements I see the following re: future motions for summary judgment in mortgage foreclosure actions:

1. Because of the statements in Kelly Scott's sworn statement, I will look at the affidavits signed by Cheryl Salmons from the Stern Law Office as suspect because Ms. Salmons was stated by Scott to have signed hundreds of affidavits without reading them.
2. From Mary Cordova's sworn statement I will be comparing the cost of service of process to the number of defendants and making sure the cost therefore is appropriate. Especially service made by Provest and G & Z.
3. I will be looking for the appropriateness of costs for "personal service" on John and Jane Does and Unknown Tenant(s).
4. From Jessica Cabrerea's sworn statement I will be looking at any affidavits signed by Caryn Graham from the Marshall Watson Law Firm because Ms. Cabrerea stated that at least one other person may have been signing Ms. Graham's name.

Just my thoughts. Please let me know if you see anything else you will be looking for arising from the three sworn statements.

JB

John T. Brown
 Circuit Court Judge
 1250 N. Eglin Parkway, Suite C-125
 Shalimar, Florida 32579
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 FAX (850) 609-3073

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From: Judge Stone
Sent: Monday, October 18, 2010 4:03 PM
To: ESC-Judges; OKA-Judges; SRA-Judges; WAL-Judges
Subject: More Foreclosure News Including sworn statement from Stern and Watson employees

Announcement from the AG's office with copies of 3 sworn statements of employees from David Stern's and Marshall Watson's office
<http://www.myfloridalegal.com/newsrel.nsf/newsreleases/8736F08B4E588F61852577C0005F668B>

From the Times
http://www.nytimes.com/2010/10/15/business/15maine.html?_r=1&scp=1&sq=maine%20foreclosure&st=cse
<http://www.nytimes.com/2010/10/16/business/16legal.html?scp=5&sq=maine%20foreclosure&st=cse>



From: Judge Terrell **Sent:** Thu, 28 Oct 2010 11:20:28 GMT
To: Judge Keith Brace
CC: Judge Wells; Robin Wright; Janet Gilbert; Judge Stone; Judge Parnham;
Subject: RE: Division W Foreclosure Cases Requiring Hearing Time Of One Hour or More

Please prepare the order to send lengthier cases back to the regular division if extended hearings are required. It is not the intent of the backlog program to use available time for more complex cases. The intent is to move the cases that can be resolved with proper attention to due process while not expending extraordinary time.

As to the extra time request, as last week's e-mail stated, it was hoped that the Supreme Court would provide some additional direction this week. That has not happened, yet. Under the circumstances of the cancellations, and while awaiting a reasonable time for further direction from the Supreme Court, please see if adjusting your block scheduling can accommodate the file review process you find necessary. In other words, for the short term please see if coming in at 8:00 but not setting hearings until 9:30 or 10:00 in the morning and doing review in the afternoon with hearings set at 2:00 or 2:30 will be adequate. Obviously, if firms are appearing by telephone from south Florida, that means hearing cease at 4:00. Of course, this is a broad suggestion, if you can devise a workable alternative for the short term, please feel free to do so.

If there is no further direction from the court in some reasonably short time (not likely more than a month), and if additional time continues to be needed to accommodate case processing issues, then adjustments will be forthcoming.

TDT

From: Judge Keith Brace [REDACTED]
Sent: Wednesday, October 27, 2010 8:36 PM
To: Judge Terrell
Cc: Robin Wright; Janet Gilbert
Subject: Division W Foreclosure Cases Requiring Hearing Time Of One Hour or More

After our conversation in Pensacola concerning above referenced cases, I spoke with Judge Parnham. He and I feel that cases in which one hour or more hearing time is requested, should be returned to its regular Division for reassignment. Please advise if you are in agreement and I will prepare a proposed Order. If you prefer to have staff counsel prepare an Order, that is fine.

Also, John and I would like for you to consider making additional time available for each of us to be able to properly review and evaluate our cases. Due to the significant issues that have developed we are spending additional time on each case examining chain of title, proper standing and evaluating affidavits. I dismissed 10 of 55 cases on October 20th for improper affidavit or invalid assignment of mortgage. In addition, the administrative duties are time consuming for example: reviewing motions, pro-se correspondence, signing the multitude of orders substituting parties, substituting counsel, motions to continue or cancel hearing or sale etc. At present we set hearings the entire day, therefore, we have to come in frequently on days that we are not compensated.

Regards, Keith

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From: Judge Terrell **Sent:** Wed, 17 Nov 2010 11:25:36 GMT

To: Judge Santurri; Judge Allen; Judge Shackelford; Judge Bell; Judge Boles; Judge Geeker; Judge Green; Judge Grinstead; Judge Heflin; Judge Johnson; Judge Jones; Judge Joyce Williams; Judge Ketchel; Judge Laporte; Judge Manev; Judge Nobles; Judge Rasmussen; Judge Remington; Judge Ward; Judge Wells; Judge Kinsey; Judge Nickinson; Judge MGoodman; Judge RGoodman; Judge Swanson; Judge Bergosh; Judge Stone; Judge Bilbrey; Judge Hilliard; Judge Parnham; Judge Brace; Judge Brown; Judge Simon; Judge Rimmer; Judge Dannhelsser; Judge Miller;

CC: Robin Wright; Janet Gilbert; Keri Igney; ESC-JA's; OKA-JA's; SRA-JA's; WAL-JA's;

Subject: FW: Mortgage Foreclosure Proceedings

[Memo to Chief Judges re Mortgage Foreclosure Proceedings.pdf \(936Kb\)](#) [Letter to Florida Press Assn et al.pdf \(169Kb\)](#)

As a follow-up to the letter sent out yesterday, please carefully read the attached letters from Chief Justice Canady. He reminds all of us of the presumption of open court proceedings in Florida. This includes hearings in chambers. Of course, if other accommodation can not be arranged in overcrowding instances, then the media as the surrogate for the public should be accommodated and consider rotating the public in and out of the available seats where possible.

By this e-mail, I request that all Administrative Judges share this information with their local court security. Furthermore, please request notification of any instance where any judge closes a hearing and pass that information along.

Keri, please forward this to all senior judges not otherwise included among the recipients of this e-mail.

From: Debbie Howells [mailto:howellsd@flcourts.org]
Sent: Wednesday, November 17, 2010 7:03 AM
To: Trial Court Chief Judges
Cc: Trial Court Administrators; Lisa Goodner; Blan Teagle; Laura Rush; Kristine Slayden; Brenda Johnson; Judge John Laurent
Subject: Mortgage Foreclosure Proceedings

Please see the attached memorandum from Chief Justice Canady regarding mortgage foreclosure proceedings.

Also attached is a copy of Chief Justice Canady's letter to The Florida Press Association.

Debbie Howells
 Office of the State Courts Administrator
 500 S. Duval Street
 Tallahassee, FL 32399-1900
 Phone 850-922-4370
 Fax 850-488-0156
 Email howellsd@flcourts.org

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Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

CHARLES T. CANADY
CHIEF JUSTICE
BARBARA J. PARIENTE
R. FRED LEWIS
PEGGY A. QUINCE
RICKY L. POLSTON
JORGE LABARGA
JAMES H.C. FERRY
JUSTICES

THOMAS D. HALL
CLERK OF COURT

KEVIN WHITE
ACTING MARSHAL

MEMORANDUM

TO: Chief Judges of the Circuit Courts

FROM: Chief Justice Charles T. Canady *CTC*

DATE: November 17, 2010

SUBJECT: Mortgage Foreclosure Proceedings

Enclosed for your review and action is a letter dated November 12, 2010, that I received from the Florida Press Association and other organizations. The letter alleges that in some instances, members of the public and/or press either have been advised that they cannot attend mortgage foreclosure proceedings or have been prevented from attending such proceedings.

As the chief administrative officer of the Florida judicial branch, I am directing all chief judges to examine the current practices within their respective circuits to ensure that those practices are entirely consistent with the constitutional, statutory, procedural rule, and case law requirements of this state regarding the presumption that state court proceedings are open to the public.

I also ask that you communicate with all judges and court staff in your circuit to remind them of the relevant provisions relating to open court proceedings. It is important for you to communicate with the clerks of court and bailiffs within your circuit as well to ensure that those offices provide any visitors

Chief Judges of the Circuit Courts
November 17, 2010
Page Two

or callers with the correct information about attendance at mortgage foreclosure or other court proceedings.

I would also like to take this opportunity to clarify the Supreme Court's understanding of the goals of the Foreclosure and Economic Recovery Funding Initiative, which was partially funded by the Legislature during the 2010 Legislative Session. I have reviewed Judge John Laurent's memorandum of October 28, 2010, a copy of which is attached and incorporated herein by reference. I agree with his description of the 62-percent goal established by the Trial Court Budget Commission as a means to help measure the court system's progress in the initiative and to document how the appropriation for the foreclosure initiative is being spent. There is no reason why the 62-percent goal should interfere with a judge's ability to adjudicate each case fairly on its merits. Each case must be adjudicated in accordance with the law.

Thank you for your ongoing efforts to appropriately administer and resolve the avalanche of mortgage foreclosure cases that have been overwhelming the court system during the past few years. I recognize that the challenge you face in assuring that these cases are resolved properly is unprecedented. I am confident that with the cooperation of all judges and court staff—along with the tools of the revised rules of court procedure, implementation of the managed mediation program, and the influx of court resources through the Foreclosure and Economic Recovery Funding Initiative—the Florida courts will be able to meet this challenge in a manner that protects and preserves the rights of all parties as well as interested observers.

CTC/LG/dgh

Enclosures

cc: Trial Court Administrators



Florida Press Association
336 E. College Avenue, Suite 203
Tallahassee, FL 32301
(850) 521-1199
Fax (850) 577-3629

Chief Justice Charles T. Canady
Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399-1925

November 12, 2010

Dear Chief Justice Canady,

We write to express our concern that the right to open access to judicial proceedings is being unduly impeded in foreclosure proceedings around the state. Our organizations have received numerous reports that extraordinary barriers to access are preventing members of the general public, as well as representatives of the news media, from observing foreclosure proceedings in judicial circuits around the state. We believe these barriers undercut the transparency of the judicial process; they also violate the strong presumption of open access to judicial proceedings under Florida law. We urge you to take action to secure the public's right to observe the workings of the judicial system.

As you know, Florida law recognizes a strong presumption in favor of open access to judicial proceedings. We have no objection, of course, to ordinary security screening measures. We are concerned, however, that the barriers to access here go far beyond such measures, leaving members of the public and press subject to the discretion of individual foreclosure judges to admit or exclude them.

The reports we have received come from all around the state, and although the precise nature of the barriers to access varies, a troubling pattern emerges: foreclosure divisions recently established by the judicial circuits have been operating under a presumption of closure to members of the general public, rather than the presumption of openness mandated by Florida law. An illustrative, but not exhaustive, list of encounters that have been reported to our organizations since August 2010 follows:

- A court observer in Hillsborough County called the court to ask about the rules governing attendance at foreclosure proceedings and was told that the proceedings were not open to the public.
- A pro se defendant in Duval County was told by a member of court security that she could not access foreclosure proceedings because only attorneys were permitted.
- A court observer called the Orange County courthouse to ask about attending foreclosure proceedings. She was informed that foreclosure hearings were held "in private chambers" and therefore not open to the public.

- In Citrus County, an individual preparing to mount a pro se defense in his own foreclosure case attempted to attend foreclosure hearings in advance of his own so that he could know what to expect when his case was heard. He was told that foreclosure hearings are “private” and take place in judges’ chambers, and that he would not be permitted to observe them.
- Most recently, a legal aid attorney in Jacksonville attended a foreclosure proceeding accompanied by a reporter from Rolling Stone Magazine. Neither the attorney nor the reporter did anything disruptive to the proceedings. At one point the reporter left the proceedings in order to interview a pro se litigant whose case had just been heard. Later that day, the judge sent an email to the attorney castigating her for bringing the reporter into the proceedings. He stated that, while “attorneys are welcome in Chambers at their leisure,” members of the media are “permitted” entry only upon “proper request to the security officer.” He further informed the attorney that she “did not have authority to take anyone back to chambers without proper screening” and stated that her “apparent authorization that the reporter could pursue a property owner immediately out of Chambers into the hallway for an interview” may be “sited [sic] for possible contempt charges in the future.”¹

In raising our concerns about this pattern of exclusion, we rely on the extensive body of case law that has made Florida a model for open government. Systematically excluding members of the press and public from judicial foreclosure proceedings violates the robust guarantee of open access to courts provided by Florida law. This Court has held that “both civil and criminal court proceedings in Florida are public events and adhere to the well established common law right of access to court proceedings and records.” *Barron v. Fla. Freedom Newspapers, Inc.*, 531 So. 2d 113, 116 (Fla. 1988); see also Fla. R. Jud. Admin. 2.420 (codifying public right of access to records of the judiciary). *Barron* articulated this right of access in forceful terms. It emphasized that “a strong presumption of openness exists for all court proceedings” and outlined the carefully circumscribed exceptions to this broad rule:

[C]losure of court proceedings or records should occur only when necessary (a) to comply with established public policy set forth in the constitution, statutes, rules, or case law; (b) to protect trade secrets; (c) to protect a compelling governmental interest [e.g., national security; confidential informants]; (d) to obtain evidence to properly determine legal issues in a case; (e) to avoid substantial injury to innocent third parties [e.g., to protect young witnesses from offensive testimony; to protect children in a divorce]; or (f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.

¹ Since the incident in Duval County was particularly egregious, we have also asked that Chief Judge Moran consider appropriate action.

Id., at 118. Even in these exceptional circumstances, “before entering a closure order, the trial court shall determine that no reasonable alternative is available to accomplish the desired result, and, if none exists, the trial court must use the least restrictive closure necessary to accomplish its purpose.” *Id.*

The protection of public access to judicial proceedings serves fundamental constitutional values. In particular, the “value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known.” *Sarasota Herald-Tribune v. State*, 924 So. 2d 8, 12 (Fla. 2d DCA 2005) (quoting *Press-Enter. Co. v. Super. Ct.*, 464 U.S. 501, 508 (1984)). “A trial courtroom is a public place where people have a general right to be present, and what transpires in the courtroom is public property.” *Plaintiff B v. Francis*, No. 5:08-cv-79, 2010 WL 503067, *2 (N.D. Fla. Feb. 5, 2010). Foreclosure proceedings are currently a matter of intense public interest. Indeed, the media has, in recent months, scrutinized them for possible procedural deficiencies. *See, e.g.*, Gretchen Morgenson and Geraldine Fabrikant, *Florida's High-Speed Answer to a Foreclosure Mess*, N.Y. TIMES, Sept. 14, 2010; Polyana da Costa, *Before Foreclosing, Judges Must Hear Out Homeowners*, MIAMI DAILY BUS. REV., Oct. 14, 2010.

As the examples outlined above show, Florida’s presumption of openness is being inverted in the context of foreclosure proceedings: courts across the state are effectively imposing a presumption of closure, which may be overcome only by special permission to observe proceedings. In effect, only those who actively assert their right of access in the face of initial barriers, and then ultimately receive permission, may exercise their right to observe foreclosure hearings.

Under Florida law, there are few justifications that can counterbalance the right to access. Even when those exceptional circumstances exist, the court must still determine that no more narrowly tailored alternative is available. *Barron*, 531 So. 2d at 118; *see also Globe Newspaper Co. v. Super. Ct. for the County of Norfolk*, 457 U.S. 596 (1982) (invalidating statute closing trials for certain sex offenses involving minors where state had a “compelling” interest in protecting minors’ privacy but where the court “offered no empirical support” that closure would effectively further that interest). There is no indication that closure of foreclosure courts occurs only when such rigorous analysis has taken place. Indeed, the opposite appears to be true: by choosing to conduct foreclosure hearings in “private” conference rooms or judicial chambers and treat those as closed proceedings, the burden shifts to members of the press or public to convince the court to allow access.

We recognize that the heavy volume of foreclosure cases has led to difficulties finding judges and courtrooms to hear the cases. As a result, some cases are being held in chambers for lack of an available traditional courtroom. Nevertheless, the proceedings must be open, even if they are held temporarily in a smaller and less formal physical

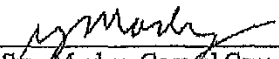
setting than usual. While we understand the necessity for ordinary and uniform security screening procedures, the unavailability of a traditional courtroom cannot justify a deprivation of the rights established under Florida law and the U.S. Constitution.

This Court has noted that the press plays an indispensable role in maintaining "the judicial system's credibility in a free society." *Barron*, 531 So. 2d at 116. That credibility cannot be maintained when members of the public and media are dependent on the indulgence of the presiding judge to allow them to observe important judicial proceedings.

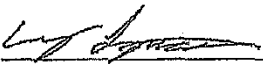
It is our sincere hope that we, and other representatives of the media, will be able to avoid instituting litigation over the issue of access to foreclosure proceedings. We do face certain time constraints, however, because Florida Rule of Appellate Procedure 9.100(d) provides for expedited review of orders excluding the public and media from judicial proceedings, and it requires such petitions to be filed within 30 days of an exclusion order.²


Accordingly, we respectfully urge you to take corrective action to ensure citizen and press access as guaranteed by Florida's right-of-access jurisprudence. In particular, we ask that you promulgate an Administrative Order or take other expeditious and appropriate action to ensure that both the public and media may observe proceedings consistent with Florida law and subject only to ordinary security measures

We thank you for your attention to this important matter.

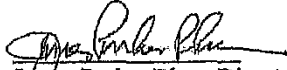

Sam Morley, General Counsel
The Florida Press Association


Talbot D'Alemberte, Bar No. 0017529
The Florida Press Association

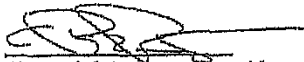

Larry Schwartz, Staff Attorney
The American Civil Liberties Union


Randall Marshall, Legal Director
The American Civil Liberties Union of Florida

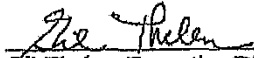
² The incident in Duval County occurred on October 26th. Accordingly, the last day to file a petition for review pursuant to Rule 9.100(d) is November 29th.



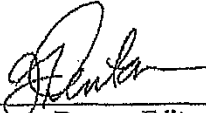
James Parker Rhea, Director & General Counsel
The First Amendment Foundation



C. Patrick Roberts, President & CEO
Florida Association of Broadcasters



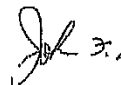
Gil Thelen, Executive Director
The Florida Society of Newspaper Editors



James Denton, Editor
The Florida Times-Union



MEMORANDUM

TO: Chief Judges of the Circuit Courts
FROM: John Laurent 
DATE: October 28, 2010
SUBJECT: Foreclosure Initiative

*The Honorable
John F. Laurent, Chair*

*The Honorable
Margaret Steinbeck,
Vice-Chair*

Members

*Catherine Brunson, Circuit Judge
Paul S. Bryan, Circuit Judge
Joseph P. Farina, Circuit Judge
Charles A. Francis, Circuit Judge
Mark Mahon, Circuit Judge
J. Thomas McGrady, Circuit Judge
Wayne M. Miller, County Judge
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Tom Gerung, Court Administrator
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Florida Conference of Circuit Court Judges
The Honorable Susan F. Schaeffer
Chair Emeritus*

Supreme Court Liaison

Justice James E. C. Perry

Florida State Courts System

500 South Duval Street

Tallahassee, FL 32399-1900

www.flcourts.org

In follow up to the Judicial Administration Committee conference call held on October 18, 2010, I am writing to reiterate the Trial Court Budget Commission's purpose for tracking the progress of cases the trial courts are hearing using funding provided for the foreclosure and economic recovery initiative. When the Florida Legislature appropriated special funding of \$6 million to help the trial courts with the significant backlog of foreclosure cases, the Trial Court Budget Commission established a measurement of progress that corresponded to the funding received: 62% of the backlog cases potentially could be processed because the Legislature funded 62% of the original request from the courts. A simple case tracking system was set up to monitor the progress and identify any reasons for delays. This is so that we will be able to report to the Legislature on how these funds were used. However, the Legislature has not specifically directed us to make such a report.

The 62% rate is not a quota. The 62% rate is simply a goal set by the TCBC to help measure the courts' progress in this initiative and document how the appropriation for the foreclosure initiative is being spent. The 62% rate was set before the initiative began and, most notably, before many of the lender moratoriums and other delays occurred. Please assure judges working on this project that the 62% rate was never intended to interfere with their ability to adjudicate each case fairly on its merits.

We will continue to monitor the progress of this initiative because we have an obligation to account for how these funds have been used. But we also will document all issues related to any difficulties that prevent or delay the court from hearing and disposing of cases before them.

JL/ks

cc: TCBC Members



Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

CHARLES T. CANADY
CHIEF JUSTICE
BARBARA J. PARIBENTE
R. FRED LEWIS
PEGGY A. QUINCE
RICKY POLSTON
JORGE LABARGA
JAMES E. C. PERRY
JUSTICES

November 17, 2010

THOMAS D. HALL
CLERK OF COURT

KEVIN WHITE
ACTING MARSHAL

Mr. Sam Morley
General Counsel
The Florida Press Association
336 East College Avenue, Suite 203
Tallahassee, Florida 32301

Mr. Talbot D'Alemberte
Mr. Larry Schwartztol
Mr. Randall Marshall
Mr. James Parker Rhea
Mr. C. Patrick Roberts
Mr. Gil Thelen
Mr. James Denton

Gentlemen:

Thank you for your letter of November 12, 2010, regarding public access to Florida foreclosure proceedings. As you know, judicial ethics rules prohibit me from intervening in actual legal disputes pending or likely to be filed in lower courts, including the possible future litigation you mentioned with regard to an incident in Duval County.

But Canon 3C(3) of the Florida Code of Judicial Conduct expressly says that "[a] judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure . . . the proper performance of their other judicial responsibilities." Under the Florida Constitution, article V, section 2(b), I

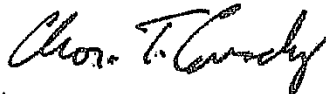
Mr. Sam Morley, et al.
November 17, 2010
Page Two

am the chief administrative officer of the state courts system. I write you solely in that capacity.

The courts of Florida belong to the people of Florida. The people of Florida are entitled to know what takes place in the courts of this state. No crisis justifies the administrative suspension of the strong legal presumption that state court proceedings are open to the public.

Today I have sent to the chief judges of Florida's twenty judicial circuits a supervisory memorandum—a copy of which is enclosed—setting forth my administrative directive on this matter. Under that directive, the chief judges shall ensure that the judges they supervise and the staff who report to those judges, as well as bailiffs and employees of the clerks of court, are not violating the rights of Floridians by improperly closing judicial proceedings to the public. The chief judges shall promptly exercise their administrative and supervisory authority to countermand closures or impediments to access that are inconsistent with Florida law.

Sincerely,



Charles T. Canady

CTC/ps

Enclosure



From: judgeterrell@vzw.blackberry.net
To: [Judge Terrell](#); [Ned Pope](#);
CC: [Ardye Graham](#); [John Kuder](#);
Subject: Re: Meeting with Fannie Mae VP

Sent: Mon, 27 Sep 2010 15:18:10 GMT

[image001.gif \(2Kb\)](#)

Trials have resolved for Tuesday and Wednesday of this week. Those days are generally open. A trial is set for Thursday and Friday.

Sent from my Verizon Wireless BlackBerry

From: "Ned Pope" <npope@collinscenter.org>
Date: Mon, 27 Sep 2010 16:17:12 -0400
To: <judgeterrell@vzw.blackberry.net>; [Judge Terrell<Judge.Terrell@FLCOURTS1.GOV>](mailto:Judge.Terrell@FLCOURTS1.GOV)
Cc: [John Kuder<kuderj@bellsouth.net>](mailto:John.Kuder@bellsouth.net); [Ardye Graham<Ardye.Graham@FLCOURTS1.GOV>](mailto:Ardye.Graham@FLCOURTS1.GOV)
Subject: RE: Meeting with Fannie Mae VP

Mrs. Graham,

Please let me know what appointment time works best for Judge Terrell. We can probably do anything from 8:00AM – 11:00 AM CT for a start time on Thursday 9/30. We would need no more than an hour for discussion.

Thanks
-Ned

From: judgeterrell@vzw.blackberry.net [<mailto:judgeterrell@vzw.blackberry.net>]
Sent: Monday, September 27, 2010 2:31 PM
To: Ned Pope; Judge Terrell
Cc: John Kuder; Ardye Graham
Subject: Re: Meeting with Fannie Mae VP

Yes, just set it up with Mrs. Graham.

Sent from my Verizon Wireless BlackBerry

From: "Ned Pope" <npope@collinscenter.org>
Date: Mon, 27 Sep 2010 14:29:29 -0400
To: <Judge.Terrell@FLCOURTS1.GOV>
Cc: [john kuder<kuderj@bellsouth.net>](mailto:john.kuder@bellsouth.net)
Subject: Meeting with Fannie Mae VP

Judge,

Do you have time for a brief meeting with Fannie Mae VP Mike Hernandez on Wednesday or Thursday morning? He'd like to discuss the pre-file foreclosure mediation program that they have developed and get your suggestions.

Thanks

-Ned

Ned Pope

Vice President of Program Development and ADR Initiatives
Director, Mortgage Foreclosure Mediation Program
npope@collinscenter.org
www.collinscenter.org

2600 Centennial Place, Suite 201
Tallahassee, Florida 32308
Office: 850-219-0082 ex.106
Fax: 850-219-0491

ccwebsig2

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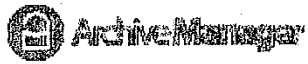
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From: [Judge Nobles](#)

Sent: Sun, 26 Sep 2010 11:30:00 GMT

To: [Janet Gilbert](#)

CC: [Judge Terrell](#)

Subject:

 [Foreclosure Checklist.doc \(51Kb\)](#)

I previously gave a copy of this form to Judge Parnham, but Judge Terrell asked me to send it to you as well. If you have any questions and can't reach me, feel free to ask Jane. I taught her the basics of foreclosures and how to use the form.

Foreclosure Checklist

Complaint:

Plaintiff: _____

Assignment: _____

Name of Defendant	Service	Answer	Default	NM	NOH
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Counts: FORECLOSE REESTABLISH REFORM DAMAGES

Property Description: _____

Attached: MORTGAGE NOTE FDCA LIS PENDENS

Form A: Yes _____ N/A _____

Motion:

Aff. of Indebtedness \$ _____

Aff. of Costs \$ _____

Aff. of Plaintiff's Atty's Fees \$ _____

Aff. of Expert for Atty's Fees \$ _____

_____ Aff. of Lost Instrument

_____ Hearing at least 20 days away

Final Judgment:

_____ Figures match _____ Property Description matches

_____ Original Note in file or _____ Lost Instrument Language

Notes:



From: [Shelia Sims](#)
To: [Judge Terrell](#)
Subject: FW: florida channel inquiry

Sent: Tue, 21 Sep 2010 15:42:55 GMT

Judge,

The questions are outlined below – please let me know if you need me to track anything down for you
- ☺ -

We are confirmed for 11:30 am CDT – your chambers.

shelia

From: Todd Morrill [mailto:tmorrill@fsu.edu]
Sent: Tuesday, September 21, 2010 2:39 PM
To: Shelia Sims
Subject: RE: florida channel inquiry

Shelia,

Thanks for all of your help in lining this up.

Here are the questions:

1—what is the current situation with foreclosures in your court? (very bogged down? Average? Etc.)

2—when did you start using senior judges?

3—how many senior judges are employed?

4—what has been the result? Have you been able to ease some of the backlog? (if you have some ballpark figures on this, they would be useful—for instance, the senior judges have taken care of X number of cases out of X number of foreclosure cases, etc.—they don't have to be too exact—just to give us an idea)

5—what about the criticism that using senior judges is unfair because litigants must pay extra to use them, and therefore, get faster service—could you please comment? Does it help everyone in the end by cutting down on number of cases?

That is all I can think of right now. If there is anything else Judge Terrell would like to include, we would be happy to discuss it.

Once again,

Thank you so much,

Todd

From: Shelia Sims [mailto:Shelia.Sims@FLCOURTS1.GOV]

Sent: Tuesday, September 21, 2010 2:44 PM
To: Todd Morrill
Subject: RE: florida channel inquiry

Mr. Morrill,

Thank you for your interest and inquiry concerning the First Circuit's Residential Mortgage Foreclosure Mediation Program (RMFMP).

Please call me (sorry I failed to get your number) to coordinate your interview with Chief Judge Terry D. Terrell for tomorrow. Additionally, I would ask that you please submit a list of your proposed questions this afternoon so that we may have the available information for you in advance of the interview time.

Thank you.

Shelia A. Sims
Chief Deputy Court Administrator
First Judicial Circuit
190 Governmental Center, 5th Floor
Pensacola, FL 32502
(850) 595-4400

From: Todd Morrill [mailto:tmorrill@fsu.edu]
Sent: Monday, September 20, 2010 1:56 PM
To: Shelia Sims
Subject: florida channel inquiry

Ms. Sims,

I am a reporter with the Florida Channel, and we are working on a story on the use of senior judges in foreclosure cases.

I understand you are making use of this program.

Would it be possible to interview you or someone else at the court on camera about how this program is working?

Thank you,

Todd Morrill
Producer/Reporter
The Florida Channel

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From: Shelia Sims **Sent:** Tue, 21 Sep 2010 14:28:32 GMT
To: Judge Terrell
CC: Robin Wright; Kerl Igney; Ardye Graham;
Subject: WSRE - Interview

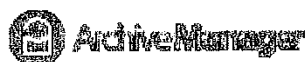
Judge,

Todd Morrill, Reporter and his camera person will plan to arrive from Tallahassee for interview at 11:30 am Wednesday, 9/22/2010 regarding the First Circuit's Residential Mortgage Foreclosure Mediation Program.

I have requested and Mr. Morrill has confirmed that he will submit proposed questions this afternoon.

Thank you for your assistance.

shelia



From: Robin Wright **Sent:** Fri, 20 Aug 2010 19:56:00 GMT
To: Judge Terrell; Judge Kinsey;
Subject: RE: Mortgage Foreclosure Backlog Initiative

OSCA indicated we are not to focus on county court cases until we have cleared up 100% of our circuit court backlog.

From: Judge Terrell
Sent: Friday, August 20, 2010 9:26 AM
To: Judge Kinsey
Cc: Robin Wright
Subject: RE: Mortgage Foreclosure Backlog Initiative

Great question!

Robin, please check with OSCA on this. I suspect the court will want us to paint with the broadest brush. We will update everyone once we receive clear direction. I suspect the answer will be yes as to all foreclosure actions, regardless of the source of origin.

TDT

From: Judge Kinsey
Sent: Friday, August 20, 2010 9:12 AM
To: Judge Terrell
Subject: RE: Mortgage Foreclosure Backlog Initiative

I notice this is called "mortgage" foreclosure backlog initiative....I do a number of foreclosure cases, but they are normally related to failure to pay HOA dues or assessments. Do you want that information, or is it only "mortgages" which is the way I read this email....thanks, pak

From: Judge Terrell
Sent: Thursday, August 19, 2010 5:19 PM
To: Judge Allen; Judge Bell; Judge Bergosh; Judge Bilbrey; Judge Boles; Judge Brace; Judge Brown (Judge.Brown@FLCOURTS1.GOV); Judge Geeker; Judge Green; Judge Grinsted; Judge Heflin; Judge Hilliard; Judge Johnson; Judge Jones; Judge Joyce Williams; Judge Ketchel; Judge Kinsey; Judge KL Williams; Judge Laporte; Judge Maney; Judge MGoodman; Judge Nickinson; Judge Nobles; Judge Rasmussen; Judge Remington; Judge RGoodman; Judge Rimmer; Judge Santurri; Judge Shackelford; Judge Simon; Judge Stone; Judge Swanson; Judge Ward; Judge Wells
Cc: ESC-JA's; OKA-JA's; SRA-JA's; WAL-JA's; Judge Parnham; Judge Brace; Robin Wright; Janet Gilbert
Subject: Mortgage Foreclosure Backlog Initiative
Importance: High

The stated goal of the Mortgage Foreclosure Backlog Initiative is to reduce the backlog of all foreclosure cases by 62% by June 30, 2011. That is a lofty goal!

As a consequence, accurate accounting of closure of all foreclosure cases is necessary; because while cases are being closed, new cases are being filed. The Supreme Court and the Chief Judges' Judicial Administration Committee have requested that all judges handling foreclosure cases report outcomes in a timely manner. Attached is a form created just for that purpose. Each judge is responsible to fill out the form

in a timely manner and forward the completed form to the relevant foreclosure backlog initiative case manager for your county.

In addition, to ensure complete accounting, each judge shall provide the foreclosure initiative case manager a list of all foreclosure cases handled since January 1, 2010. That list can be provided in a number of alternative ways by November 1, 2010. The list should include the case name and case number. If you or your JA have the time and wish to assist further, the specific information we need documented is the entry of final summary judgment in a foreclosure case.

If your JA keeps an electronic docket, have an electronic copy of the docket for any date that a foreclosure case was heard forwarded to the case manager. If you only have written docket sheets or ledgers, either send a photo copy or a fax of the docket sheet or ledger for any date a foreclosure case was heard to the case manager.

We are aware this requirement places added demands on stretched resources, but accurate, timely reporting of our use and management of the Legislature's special appropriation to reduce the backlog is vital. It is not a stretch to say that the judiciary's future may be impacted by how well we manage and demonstrate progress on reducing the backlog by effective use of this special appropriation.

TDT

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From: Robin Wright **Sent:** Fri, 20 Aug 2010 09:42:00 GMT
To: Judge Terrell; Judge Kinsey;
Subject: RE: Mortgage Foreclosure Backlog Initiative

I forwarded it OSCA

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Cc: Robin Wright
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Cc: ESC-JA's; OKA-JA's; SRA-JA's; WAL-JA's; Judge Parnham; Judge Brace; Robin Wright; Janet Gilbert
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TDT

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From: Frannie Natalie **Sent:** Thu, 12 Aug 2010 12:12:41 GMT
To: ESC-Judges; OKA-Judges; SRA-Judges; WAL-Judges;
CC: Frannie Natalie
Subject: Foreclosure Articles

Good Morning:

Judge Stone has asked that I forward the following articles to each of you for your review.

From Page A-3 of August 12, 2010 Northwest Florida Daily News.

LOCAL & STATE Briefs

The Associated Press and Staff reports

TALLAHASSEE AG investigating foreclosure law firms The Florida Attorney General's office is investigating three of the state's largest law firms that represent lenders in foreclosure cases. Bill McCollum's office announced the probe Tuesday against The Law Offices of Marshall C. Watson in Fort Lauderdale, Shapiro & Fishman in Tampa, and The Law Offices of David J. Stern in Plantation. The case is being handled by the attorney general's Economic Crimes Division. McCollum said they're investigating whether the firms created and filed fraudulent documentation to speed up foreclosure proceedings. Attorneys for Shapiro & Fishman and Stern's firm deny wrongdoing, but said they will comply with the subpoenas.

St. Petersburg Times, September 11, 2010

Attorney general investigates law firms in alleged falsified foreclosures

By Susan Taylor Martin, Times Senior Correspondent

In Print: Wednesday, August 11, 2010

As foreclosures soar to record levels, Florida homeowners, defense lawyers and even some judges have complained about what they say is shoddy and fraudulent paperwork filed by banks seeking to foreclose.

Now, the Florida Attorney General's Office is joining the fray.

The office announced Tuesday that it is investigating the law firms of Shapiro & Fishman in Tampa, Marshall Watson in Fort Lauderdale and David J. Stern in Plantation for alleged "unfair and deceptive actions" that may have cost people their homes.

Among the allegations: that the firms, which represent banks, filed "fabricated" documents in court on numerous occasions when the original paperwork needed to foreclose was missing.

"Thousands of final judgments of foreclosure against Florida homeowners may have been the result of the allegedly improper actions of the law firms under investigation," the Attorney General's Office said in a news release.

All three firms were served with subpoenas Friday demanding they turn over reams of records, including the names of all lenders they have represented in the past five years and the names of all lawyers, notaries and other employees.

In addition, each firm was asked to provide documents on certain foreclosure cases it has handled. Among them is that of Ernest Harpster, a Pasco County homeowner whose case was dismissed by Judge Lynn Tepper in March after she ruled that Stern's firm had submitted what she called a "fraudulently backdated" document.

Jeffrey Tew, a Miami lawyer representing Stern, said the firm "fully intends to cooperate" with the subpoena.

"We are confident when they see all facts they will conclude the Stern law firm hasn't done anything wrong," he said.

As with the Harpster case, 21 assignments of mortgage filed in Palm Beach County by the Stern firm appeared to be backdated because they bore stamps from notary seals that did not exist at the time the documents supposedly were notarized.

Assignments of mortgage — which transfer ownership of a loan from one party to another — are key in determining who has the legal right to foreclose. A backdated assignment could mean that the bank didn't own the note at the time it started foreclosing, or that the assignment was created to show ownership that didn't actually exist.

Tew said that cases with problematic notary seals were a minuscule number of the 100,000 or so foreclosures Stern's firm has handled in the past few years.

"These are clerical mistakes, and it's wrong to attribute some sort of evil motives because they were legitimate mortgages and legitimate foreclosures," Tew said. "And when the firm found out this mistake in dating they withdrew the misdated assignments from the court files and filed proper ones."

The other two law firms, Shapiro & Fishman and Marshall Watson, did not return calls and e-mails seeking comment.

The three law firms bring to five the number of institutions under investigation by the Attorney General's Office for allegedly deceptive foreclosure practices. The office already had been looking at Florida Default Law Group in Tampa and Fidelity National Financial in Jacksonville.

Pinellas Circuit Judge Anthony Rondolino, who handles some of the 33,000 foreclosure cases pending in Pinellas and Pasco Counties, said he could not comment on the investigation. But he acknowledged that he and other judges "have had concern for some time" about foreclosure filings.

As a result, lawyers must certify that they have complied with proper foreclosure procedures and that they are "actually paying attention to what (is) being filed," Rondolino said.

But lawyers representing homeowners say problems are rampant nationwide.

"We have fraudulent documents in each and every foreclosure case of mine and in every foreclosure case filed in this country," said lawyer April Charney, a foreclosure expert with Jacksonville Area Legal Aid.

"There is layer upon layer of bogus documents in the assignments, powers of attorney, pleading, judgments, affidavits, service of process, etc., from one end to the other," she said.

The largest of what Charney and other critics call "foreclosure mills" is the Stern firm. It represents most of the nation's biggest banks and handles 20 percent of all foreclosure suits filed in Florida.

As the *St. Petersburg Times* reported last month, Stern, who lives in a \$15 million Fort Lauderdale house with a tennis court, was publicly reprimanded by the Florida Bar in 2002 for misleading and overcharging both homeowners and his own clients.

Florida Attorney General Website

August 10, 2010

Media Contact: Sandi Copes

Phone: (850) 245-0150

Florida Law Firms Subpoenaed Over Foreclosure Filing Practices

TALLAHASSEE, FL – Attorney General Bill McCollum today announced his office has launched three new investigations into allegations of unfair and deceptive actions by Florida law firms handling foreclosure cases. The Attorney General's Economic Crimes Division is investigating whether improper documentation may have been created and filed with Florida courts to speed up foreclosure processes, potentially without the knowledge or consent of the homeowners involved.

The new investigations name The Law Offices of Marshall C. Watson, P.A.; Shapiro & Fishman, LLP; and the Law Offices of David J. Stern, P.A. The law firms were hired by loan servicers to begin foreclosure proceedings when consumers were in arrears on their mortgages.

Because many mortgages have been bought and sold by different institutions multiple times, key paperwork involved in the process to obtain foreclosure judgments is often missing. On numerous occasions, allegedly fabricated documents have been presented to the courts in foreclosure actions to obtain final judgments against homeowners. Thousands of final judgments of foreclosure against Florida homeowners may have been the result of the allegedly improper actions of the law firms under investigation.

The Attorney General's Office is also investigating whether the law firms have created affiliated companies outside the United States where the allegedly false documents are being prepared and then submitted to the law firms for use.

Subpoenas have been served on each of the law firms listed above, and the investigations are ongoing.



From: Janet Gilbert **Sent:** Mon, 02 Aug 2010 14:49:12 GMT
To: Judge Terrell
CC: Judge Rasmussen; Robin Wright;
Subject: RE: FORECLOSURE CHECKLIST..doc

FORECLOSURE CHECKLIST 1ST CIRCUIT .rtf (41Kb)

Thank you Judge Terrell, here is the one we are using for Judges Parnham and Brace.

Janet E. Gilbert
 Family Court Manager
 Court Administration
 1st Judicial Circuit of Florida
 190 Governmental Center
 Pensacola, FL 32502
 Phone: 850-595-0379
 FAX: 850-595-3246
janet.gilbert@flcourts1.gov

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From: Judge Terrell
Sent: Monday, August 02, 2010 2:33 PM
To: Janet Gilbert
Cc: Robin Wright; Judge Rasmussen
Subject: FW: FORECLOSURE CHECKLIST..doc

Janet,
 Here's a copy for you.
 TDT

From: Judge Terrell
Sent: Monday, August 02, 2010 1:05 PM
To: Judge MGoodman; Judge Rasmussen; Judge Santurri; Judge Stone; Judge Wells
Cc: Judge Bergosh; Robin Wright
Subject: FW: FORECLOSURE CHECKLIST..doc

Apologies, apparently "Reply to All" was used instead of "Forward". Here is the form.
 TDT

From: Judge MGoodman
Sent: Friday, July 30, 2010 12:53 PM
To: Judge Terrell; Judge Bergosh; Judge Santurri
Subject: FW: FORECLOSURE CHECKLIST..doc

This is a checklist that another circuit has their plaintiff attorneys fill out prior to the hearing for summary judgement...do we want to have them do the same thing?

From: Nancy Alley [mailto:Nancy.Alley@flcourts18.org]
Sent: Friday, July 30, 2010 8:39 AM
To: Judge MGoodman
Subject: FW: FORECLOSURE CHECKLIST..doc

Marcia, this is the short checklist we use. All plaintiff attorneys must complete it and hand it to the judge at SJ hearings.

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FIRST JUDICIAL CIRCUIT, _____ COUNTY, FLORIDA

FORECLOSURE CHECKLIST FOR FINAL HEARING

PLAINTIFF _____

CASE NUMBER: _____

vs.

Please enter the docket entry # (DE#) if known; otherwise, insert date for the action.

DEFENDANT(S)	ANSWER (DATE FILED)	RETURN OF SERVICE FILED/ DATE SERVED	DEFAULT OR PUBLICATION DATE FILED	PARTIES DROPPED OR VOL. DISMISSED

Date Motion for Summary Judgment FILED: _____

Have the following documents been filed?

- 1. Original Promissory Note: YES NO N/A DATE FILED: _____
- 2. Substantial Copy of Note: YES NO N/A DATE FILED: _____
- 3. Original Mortgage: YES NO N/A DATE FILED: _____
- 4. Certified Copy of Mortgage: YES NO N/A DATE FILED: _____
- 5. Assignment (if any): YES NO N/A DATE FILED: _____
- 6. Affidavit of Lost Instrument:
 - a. Note YES NO N/A DATE FILED: _____
 - b. Mortgage YES NO N/A DATE FILED: _____

AFFIDAVITS

- 1) Amounts Due: YES NO N/A DATE FILED: _____
- 2) Costs: YES NO N/A DATE FILED: _____
- 3) Attorney's Fees: YES NO N/A DATE FILED: _____
 - a. Expert Affidavit: YES NO N/A DATE FILED: _____
 - b. Plaintiff's Attorney's YES NO N/A DATE FILED: _____
 Affidavit (time and fee arrangement with client)

I, the undersigned, certify that I have reviewed the file and verified the information provided herein to be true and correct.

Signature of Attorney for Plaintiff

Date Signed

Printed Name of Attorney



From: Judge Terrell
To: Bailey, Jennifer; Burton Conner;
Subject: RE: MAO Application to County Court

Sent: Thu, 22 Jul 2010 17:19:00 GMT

Burton and Jennifer,

There is no distinction that I recall in the MAO's, but foreclosures in county court are a rarity considering the limited jurisdictional amount. So to answer the question, it appears the MAO applies. But we may need to check with clerks in county courts regarding qualifying filings. Just thinking off the top of my head, the legislatively established filing fees for foreclosures don't differentiate down to the county jurisdictional limits; so there isn't much incentive to file in county court. And the institutional plaintiffs can be readily identified by name.

Due to a civil trial scheduled Monday, I will only be able to attend the Sunday meeting, weather and travel arrangements permitting; so I hope to see you at Marco Island.

Terry

From: Burton Conner [mailto:ConnerB@circuit19.org]
Sent: Thursday, July 22, 2010 4:46 PM
To: Bailey, Jennifer; Judge Terrell
Subject: MAO Application to County Court

Jennifer and Terry,

I have been embroiled in the MAO waaaaay tooooo loooonnnng! My jury is out deliberating at the end of an 8 day trial, so I may be a little brain dead at this point. But I had an interesting email today asking this question: can an attorney file a foreclosure suit in county court and avoid having to comply with the MAO?

Quite honestly, I have never thought about county court mortgage foreclosures and the RMFM Program. However, it certainly seems to me that the MAO all three Chiefs jointly sign makes no distinction between county court cases and circuit court cases.

So have either of you had the issue come up in your circuits, and if so, what position did you take?

Have a Great Evening,
Burton

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From: Burton Conner **Sent:** Thu, 22 Jul 2010 10:46:48 GMT
To: Gloria Massey; jay.foster@canopysoftware.com; Ned Pope; Chris Bailey;
CC: Judge Terrell; Bailey, Jennifer; Tom Bateman;
Subject: Identification of All Borrower-Defendants

Ned,

Tom has alerted Judge Bailey and myself that we may have a very significant glitch with the MAO the three pilots adopted last February (and a similar glitch is in the MAO approved by the Chief Justice in the AO entered last December).

As I understand it, there are a number of situations in which the mediator finds out during the mediation session that there is a co-borrower on the note who is not present at mediation.

In the first version of the AO in my circuit, Form A required the plaintiff's counsel to give the name, phone number and email address for each defendant. My understanding is the CC had a online form that the plaintiff's filled out. It is also my understanding the online form did not require the plaintiff's attorney to identify which defendants were borrowers.

In the second version of the AO in my circuit (which I asked my Chief to implement in November 2009, after the Mortgage Task Force sent its recommendations to the Supreme Court), I segregated out the defendant contact info from Form A (due to concerns raised by the Task Force concerning privacy issues regarding a court document with public access which has phone numbers and email addresses for parties). Since November 2009, the defendant contact info was to be transmitted separately from Form A.

In the MAO jointly entered by all three pilot circuits in February of this year, again the defendant contact info requirement is not part of Form A. Instead, there is language that the contact info is to be submitted by plaintiff's counsel to CC electronically in a format approved by the Chief Judge.

At this point, there is no language in any of the AO's that specifically requires plaintiff's counsel to identify who are the borrower-defendants. However, I contend that each Chief can require that the format in which plaintiff's counsel is to transmit the defendant contact info must identify which defendants are borrowers. Plaintiff's counsel is certainly in the best position to make that determination.

In the first AO in my circuit, one of the glitches is that there was no provision as to who was responsible for sending out the notice of the mediation date, time and place.

However, starting in the version of the AO in effect since November 2009, the AO in my circuit has put that responsibility on CC as to all the parties. I assume CC has been sending out the notice of the mediation to all parties. So in my mind, the issue is not that a borrower-defendant has not been given notice of the mediation.

However, *there needs to be a requirement that plaintiff's counsel identify when transmitting defendant contact info which defendants are borrowers* for two reasons:

1) It is required that CC make contact with all the borrowers. One of CC's primary responsibilities is to make that outreach to all borrowers to explain the program and determine if all want to participate in the program. I am not contending that CC has to speak personally to each borrower: a husband may speak for a wife and vice-versa. However, I do contend that if CC receives any information that any of the borrowers does not want to participate in the program, a Notice of Borrower Nonparticipation should be filed (kicking the case out of the program). That is because nothing can be agreed to at mediation unless all the borrowers agree.

2) It is CC's responsibility to assure that all borrowers attend foreclosure counselors attend foreclosure counseling and provide the required borrower financial info for mediation. Again, I am not contending that each borrower has to attend the telephone foreclosure counseling (a husband can attend on behalf of a wife and vice-versa). But if there is a parent co-signing on a note with a child, both parent and child have to attend foreclosure counseling and provide the financial info.

I am asking Judge Bailey and CJ Terrell to weigh in with their comments if they disagree with my viewpoint.

So what I need to know from you at this point is this: what is the format you are currently using to obtain the defendant contact info from plaintiff's counsel. Is there a form the plaintiff's counsel faxes to you, or is it submitted by some online form? It would be help to see whatever form you are using, and then Judge Bailey, CJ Terrell, and I can tweak it to assure the format requires the plaintiff's counsel to disclose which defendants are borrowers.

Thanks and have a Great Week!
Burton

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From: Keri Igney
To: Judge Kelth Brace; [REDACTED]
CC: Judge Terrell; Robin Wright; Keri Igney;
Subject: FW: Learning Opportunity for Senior Judges Assigned to Hear Foreclosure Cases

Sent: Tue, 22 Jun 2010 13:16:55 GMT

Judges Parnham and Brace:

For your information.

Keri

From: Melissa Henderson [mailto:HendersM@flcourts.org]
Sent: Tuesday, June 22, 2010 12:11 PM
To: Keri Igney
Subject: Learning Opportunity for Senior Judges Assigned to Hear Foreclosure Cases

Learning Opportunity for Senior Judges Assigned to Hear Foreclosure Cases

(This email is being sent to all Senior Judges approved for Circuit & County bench work, with a courtesy copy to JA's, and TCA's.)

Greetings:

As you know the Florida Legislature has recently allocated funds for the use of senior judges to help alleviate the backlog of foreclosure cases that are clogging court dockets throughout the state.

As a result, some senior judges may soon find themselves sitting on potentially large numbers of foreclosure cases with varying levels of complexity. In an effort to assist these judges in this important endeavor, we are pleased to announce that a comprehensive foreclosure course will be part of the agenda at the upcoming education program of the Florida Conference of Circuit Judges, to be held in late July at the Marco Island Marriott in Marco Island, Florida.

"The Nuts and Bolts of Foreclosure" is scheduled for Tuesday, July 27, 2010, from 3:00 – 4:30 p.m. The course will be taught by Judge Jennifer Bailey of the 11th Judicial Circuit and carries a maximum of 1.5 hours of CJE credit. After completing the course, participants should be able to:

- List the basic requirements for the entry of a summary judgment in a mortgage foreclosure case.
- Identify affirmative defenses which would preclude the entry of summary judgment in a mortgage foreclosure case.
- Recognize the challenges and ethical issues that arise when dealing with attorneys and pro se litigants in mortgage foreclosure cases.

If you are a senior judge who is scheduled to begin hearing foreclosure cases, don't miss this

important opportunity to brush up on current foreclosure law and procedures. In order to take advantage of this learning opportunity, you must register for the conference, at:

www.flcircuitconference.com
(Password is FCCJ2010 and is case sensitive)

Please carefully read the information previously sent to you either by email or by regular mail for instructions and more information on registering for the conference. ***Please note that you should plan to attend the entire conference in order to be reimbursed; this notice is merely to advise you of one of the course offerings which may be particularly important to you.***

The conference registration deadline is July 15, 2010. The discounted on-line registration fee is \$140.00, of which \$112.00 is reimbursable. Anyone who misses this deadline can still attend and register at the conference registration desk. The non-discounted registration fee is \$165.00, of which \$112.00 is reimbursable.

We are aware that currently there are no more rooms available at the conference hotel. However, a state government rate is available at the Hilton on Marco Island for \$108/night plus tax for a total of \$118.80 per night, which is actually less expensive than the Marco Marriott. Following is the link to make a reservation for that hotel:

https://secure.hilton.com/en/hi/res/choose_dates.jhtml;jsessionid=P2A3LSL0XN0F0CSGBIWMVCO?requestid=217287


We hope you are able to attend this important educational offering and look forward to seeing you there.

Martha Martin
Chief of Court Education

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From: [Keri Igney](#) **Sent:** Tue, 15 Jun 2010 08:35:36 GMT
To: [Robin Wright](#); [Keri Igney](#); [ESRBA](#); [ESC-Judges](#); [Honorable Ernie Magaha](#);
CC: [ESC-JA's](#); [Lisa Bernau](#); [Klm Davis](#); [Cldy Rhodes](#); rdavis@clerk.co.escambia.fl.us; [Dianne Voiovar](#);
Subject: ECAD 2010-03 Electronic Mortgage Foreclosure Sales

 [ECAD 2010-03 ELECTRONIC MORTGAGE FORECLOSURE SALES.pdf \(36Kb\)](#)

Enclosed is Escambia County Administrative Directive 2010-03, *Electronic Mortgage Foreclosure Sales*, authored by Administrative Judge Paul Rasmussen.

Should you have difficulty opening the attachment, please let me know how I may assist you.

Keri

Keri Igney
Administrative Office of the Chief Judge
First Judicial Circuit
850.595.4451
Keri.Igney@FLCourts1.gov

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

ADMINISTRATIVE DIRECTIVE NO. ECAD 2010-3

RE: Electronic Mortgage Foreclosure Sales

WHEREAS, § 45.031(10), Florida Statutes authorizes the Clerk of Court to conduct the sale of real or personal property under an order or judgment by electronic means, and

WHEREAS, the Clerk of Court in Escambia County, Florida intends to utilize this procedure effective June 14, 2010, and

WHEREAS, certain judgments may already have been entered providing for public sale on or after June 14, 2010 by methods other than electronic sale, therefore, it is

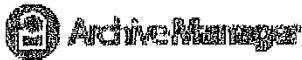
ORDERED AND ADJUDGED that the Clerk of Court in and for Escambia County, Florida at his discretion, may conduct all pending mortgage foreclosure sales electronically pursuant to § 45.031(10), Florida Statutes upon proper notice being afforded to all affected parties.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida this 14th day of June, 2010.


Paul Rasmussen, Administrative Judge

Conformed copies to:

All Circuit and County Judges, Escambia County
The Honorable Ernie Lee Magaha, Clerk of Courts
Robin Wright, Court Administrator
Keri Igney, Administrative Assistant to the Chief Judge
The Summation
Escambia/Santa Rosa Bar Association



From: [John Dew](#) **Sent:** Tue, 08 Jun 2010 11:36:15 GMT
To: [Robin Wright](#); [John Dew](#);
CC: [Judge Terrell](#); [Kris Slayden](#); [Don Howard](#); [Lisa Bernau](#); [Martha Ingle](#); [Mary Johnson](#);
Subject: Re: Foreclosures

Robin.

Thank you for getting back to us: Just to let you know the CCOC will make the decision on how much will be appropriated to each Clerk in the circuit. The information you provided on how your circuit will allocate your resources helps.

Thanks again.

John

Sent from my Verizon Wireless BlackBerry

From: Robin Wright <Robin.Wright@FLCOURTS1.GOV>
Date: Tue, 8 Jun 2010 11:28:47 -0400
To: John Dew<JohnDew@flccoc.org>
Cc: Kristine Slayden<slaydenk@flcourts.org>; Judge Terrell<Judge.Terrell@FLCOURTS1.GOV>; Lisa Bernau<lbernau@clerk.co.escambia.fl.us>; Don Howard<dhoward@clerkofcourts.cc>; The Hon. Martha Ingle<ingmartha@co.walton.fl.us>; johnsonm@flcfn.net<johnsonm@flcfn.net>
Subject: RE: Foreclosures

John,

We have appropriated the \$ 74,464.74 for the 1st Circuit as follows:

Okaloosa (34%)	\$ 25,318.00
Escambia (26.5%)	\$ 19,733.00
Walton (26.5%)	\$ 19,733.00
Santa Rosa (13%)	\$ 9,680.74

We determined these percentages based on the percentage of each county's mortgage backlog. We actually used these same percentages to determine the number of allocated senior judge days in each county.

Please let me know if you need any additional information.

Thanks,

Robin

From: John Dew [mailto:JohnDew@flccoc.org]
Sent: Tuesday, June 08, 2010 7:59 AM
To: Judge Terrell
Cc: Kristine Slayden; Robin Wright
Subject: RE: Foreclosures

Good Morning Judge Terrell.

I am just checking back with you on the progress concerning the earlier request for information. Would it be possible for your office to provide the information prior to 5pm on Friday, June 11th? We have a CCOC Executive Council meeting on Monday, June 14th to vote on a plan for distributing budget authority for Clerks to help in the foreclosure recovery plan and need information from your office to help. We then plan on meeting with Legislative staff on the 16th to present our plan.

We appreciate your help.

Thanks,

John

From: Judge Terrell [mailto:Judge.Terrell@FLCOURTS1.GOV]
Sent: Sunday, May 30, 2010 2:53 PM
To: John Dew
Cc: Kristine Slayden; Robin Wright; emagaha@clerk.co.escambia.fl.us; Mary Johnson; Don Howard; Martha Ingle
Subject: RE: Foreclosures

Mr. Dew,

Thank you for your input. This issue is being addressed forthwith, and an equitable distribution of available funds will be accomplished to address the mortgage foreclosure backlog issue with the able assistance of all the clerks in the First Circuit.

TDT

From: John Dew [mailto:JohnDew@flccoc.org]
Sent: Friday, May 28, 2010 3:58 PM
To: Judge Terrell
Cc: Kristine Slayden
Subject: Foreclosures

Good Afternoon Judge Terrell.

Please find attached a request from Clerk Howard Forman, Chair of the Clerk of Court Operations, for your assistance. The Corporation is responsible for determining the amount of resources to provide to Clerks for the purpose of helping move backlogged foreclosure cases. Please call me at (850) 386-2223 if you have any questions.

Thank you in advance.

John Dew
CCOC Executive Director

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From: Tom Bateman **Sent:** Thu, 03 Jun 2010 11:26:38 GMT
To: Tom Bateman
Subject: Verified Complaint: Supreme Court Order Denying Rehearing and Revised Opinion

[sc09-1579 6-3-10.pdf \(162Kb\)](#) [sc09-1460 6-3-10.pdf \(165Kb\)](#) [ATT10521408.gif \(6Kb\)](#) [sc09-1460 order 6-3-10.pdf \(101Kb\)](#)

FYI

In short, rehearing has been denied. The FSC said: "In light of the revised opinion, Ben-Ezra and Katz, P.A.'s Motion for Rehearing and Shapiro and Fishman, LLP's Motion for Rehearing or Clarification are hereby denied."

And, the amendment to Rule 1.110 requiring mortgage foreclosure complaints to be verified is effective immediately. The FSC said again, "The amendments shall become effective immediately upon the release of this opinion."

The Supreme Court issued an order denying rehearing and two revised opinions in the mortgage foreclosure cases (SC09-1460 and SC09-1579) today. The only changes in the opinions are two nonsubstantive clerical corrections: correcting the number of form 1.924 in the appendix and correcting a cross-reference in item 3 of Form 1.996(a). I am attaching the opinions for your information.

cid:XKNFRLGKPGHN.logo.gif

Thomas H. Bateman III
 Messer, Caparello & Self, P.A.
 2618 Centennial Place
 Tallahassee, FL 32308

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 Office Phone: (850) 222-0720
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 Web: www.lawfla.com

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Supreme Court of Florida

No. SC09-1460

**IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL
PROCEDURE.**

No. SC09-1579

**IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL
PROCEDURE - FORM 1.996 (FINAL JUDGMENT OF FORECLOSURE).**

[February 11, 2010]

REVISED ON REHEARING

PER CURIAM.

In case number SC09-1460, the Task Force on Residential Mortgage Foreclosure Cases has proposed an amendment to Florida Rule of Civil Procedure 1.110 (General Rules of Pleading) and two new Forms for Use with Rules of Civil Procedure. In case number SC09-1579, the Civil Procedure Rules Committee has proposed amendments to form 1.996 (Final Judgment of Foreclosure) of the Forms for Use with Rules of Civil Procedure. We have consolidated these cases for the purposes of this opinion. We have jurisdiction. See art. V, § 2(a), Fla. Const.

Case No. SC09-1460

By administrative order on March 27, 2009, the Task Force on Residential Mortgage Foreclosure Cases (Task Force) was “established to recommend to the Supreme Court policies, procedures, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties.” In re Task Force on Residential Mortgage Foreclosure Cases, Fla. Admin. Order No. AOSC09-8, at 2 (March 27, 2009) (on file with Clerk of the Florida Supreme Court). The recommendations could “include mediation and other alternate dispute resolution strategies, case management techniques, and approaches to providing pro bono or low-cost legal assistance to homeowners.” Id. The Task Force was also specifically asked to “examine existing court rules and propose new rules or rule changes that will facilitate early, equitable resolution of residential mortgage foreclosure cases.” Id.

In response to this charge, the Task Force has filed a petition proposing amendments to the civil procedure rules and forms.¹ After submission to the

1. The Task Force also submitted a companion report entitled “Final Report and Recommendations on Residential Mortgage Foreclosure Cases.” The report urges the adoption of the proposed rule amendments and also contains administrative recommendations. The main recommendation in the report is the approval of a Model Administrative Order for a managed mediation program for residential mortgage foreclosure actions for use by the chief judges. The report was address separately as an administrative matter. The Task Force’s petition also

Court, the proposals were published for comment on an expedited basis. Comments were received from Legal Services of Greater Miami, the Florida Justice Institute and Florida Legal Services, Inc; the Housing and Consumer Umbrella Groups of Florida Legal Services; Legal Services of North Florida, Inc., and North Florida Center for Equal Justice, Inc.; the Florida Bankers Association; Florida Default Law Group; Ben-Ezra & Katz, P.A.; Thomas H. Bateman III and Janet E. Ferris; Henry P. Trawick, Jr.; and Lisa Epstein. Oral argument was heard in this matter on November 4, 2009. Upon consideration of the Task Force's petition, the comments filed and responses thereto, and the presentations of the parties at oral argument, we adopt the Task Force's proposals with minor modifications as discussed below.

First, rule 1.110(b) is amended to require verification of mortgage foreclosure complaints involving residential real property. The primary purposes of this amendment are (1) to provide incentive for the plaintiff to appropriately investigate and verify its ownership of the note or right to enforce the note and

recommended amendments to form 1.997 (Civil Coversheet). However, the Civil Coversheet was the subject of another case, case number SC08-1141, and the Task Force's proposals with regard to the Civil Coversheet were addressed in that case. See In re Amendments to Florida Rules of Civil Procedure—Management of Cases Involving Complex Litigation, 34 Fla. L. Weekly S576 (Fla. Oct. 15, 2009).

ensure that the allegations in the complaint are accurate; (2) to conserve judicial resources that are currently being wasted on inappropriately pleaded “lost note” counts and inconsistent allegations; (3) to prevent the wasting of judicial resources and harm to defendants resulting from suits brought by plaintiffs not entitled to enforce the note; and (4) to give trial courts greater authority to sanction plaintiffs who make false allegations.

Next, the Task Force proposed a new form Affidavit of Diligent Search and Inquiry. In its petition, the Task Force explained that many foreclosure cases are served by publication. The new form is meant to help standardize affidavits of diligent search and inquiry and provide information to the court regarding the methods used to attempt to locate and serve the defendant. We adopt this form as new form 1.924, with several modifications.

The form, as proposed by the Task Force, provides spaces for the affiant to check off, from a list, the various actions taken to discover the current residence of the defendant and provides a “catch-all” section where the affiant can “List all additional efforts made to locate defendant.” Additionally, it provides a section where the affiant can describe “Attempts to Serve Process and Results.” One comment to this form, voiced by several interested parties, was that the form should be signed by the person actually performing the diligent search and inquiry, likely a process server, and not the plaintiff as the form, as originally proposed,

provided. The Task Force agreed with this comment. Thus, we modify the form to incorporate this change.

Next, although the Task Force stated in its petition that a significant provision of the new form was the “additional criteria [sic] that if the process server serves an occupant in the property, he inquires of that occupant whether he knows the location of the borrower-defendant,” the proposed form does not include this provision. The Honorable Thomas McGrady, Chief Judge of the Sixth Judicial Circuit, raised this point in his comment and suggested the following provision be added to the form: “I inquired of the occupant of the premises whether the occupant knows the location of the borrower-defendant, with the following results: _____.” Again, the Task Force agreed with this suggestion, and we modify the form to incorporate it.

Finally, section 49.041, Florida Statutes (2009), sets forth the minimum requirements for an affidavit of diligent search and inquiry and states as follows:

The sworn statement of the plaintiff, his or her agent or attorney, for service of process by publication against a natural person, shall show:

(1) That diligent search and inquiry have been made to discover the name and residence of such person, and that the same is set forth in said sworn statement as particularly as is known to the affiant; and

(2) Whether such person is over or under the age of 18 years, if his or her age is known, or that the person's age is unknown; and

(3) In addition to the above, that the residence of such person is, either:

(a) Unknown to the affiant; or

(b) In some state or country other than this state, stating said residence if known; or

(c) In the state, but that he or she has been absent from the state for more than 60 days next preceding the making of the sworn statement, or conceals himself or herself so that process cannot be personally served, and that affiant believes that there is no person in the state upon whom service of process would bind said absent or concealed defendant.

§ 49.041, Fla. Stat. (2009). The form as proposed by the Task Force contains the required information, except for a statement whether the person is over or under the age of eighteen or that the person's age is unknown. Thus, we modify the affidavit form to include this information.

Finally, we adopt the Task Force's proposed Motion to Cancel and Reschedule Foreclosure Sale as new form 1.996(b). The Task Force recommended adoption of this new form in which the plaintiff would provide the court with an explanation of why the foreclosure sale needs to be cancelled and request that the court reschedule the sale. As the reason for this proposal, the Task Force stated in its petition:

Currently, many foreclosure sales set by the final judgment and handled by the clerks of court are the subject of vague last-minute motions to reset sales without giving any specific information as to why the sale is being reset. It is important to know why sales are being reset so as to determine when they can properly be reset, or whether the sales process is being abused. . . . Again, this is designed at promoting effective case management and keeping properties out of extended limbo between final judgment and sale.

We adopt this form with minor stylistic and grammatical modifications as suggested in the comments and agreed to by the Task Force.

Case No. SC09-1579

In this case, the Civil Procedure Rules Committee has filed an out-of-cycle report under Florida Rule of Judicial Administration 2.140(e), proposing amendments to Florida Rule of Civil Procedure Form 1.996 (Final Judgment of Foreclosure). The Committee proposes amendments to this form in order to bring it into conformity with current statutory provisions and requirements. The Committee's proposal also includes several changes suggested by The Florida Bar's Real Property, Probate, and Trust Law Section to improve the form's clarity and readability and better conform to prevailing practices in the courts.² Upon consideration, we adopt the proposed amendments to form 1.996, with one exception, as further explained below.

2. Prior to submitting this proposal to the Court, the committee published it for comment. One comment was received suggesting that, in addition to the other amendments proposed by the committee, provisions for specific findings as to the reasonable number of hours and the reasonable hourly rate for an award of attorneys' fees be added to paragraph one of the form. The committee initially took the position that the comment suggested a change unrelated to its proposed amendments and that the committee would consider it in its 2013 regular-cycle report. Subsequently, however, the committee filed an additional response in which it agreed with the comment and recommended that the suggested change be made in this case. We agree with the committee that this additional change is appropriate and, accordingly, we include it in the amendments adopted in this case.

First, to conform to current statutory requirements, a notice to lienholders and directions to property owners as to how to claim a right to funds remaining after public auction is added to the form. See § 45.031(1), Fla. Stat. (2009). Additionally, to conform to current statutory provisions allowing the clerk of court to conduct judicial sales via electronic means, the form is amended to accommodate this option. See § 45.031(10), Fla. Stat. (2009).

Other amendments are as follows: (1) in order to provide greater clarity and prevent errors, paragraph one of the form is amended to set out amounts due in a column format; (2) paragraph two is amended to allow for the possibility that there may be more than one defendant, and out of concern for privacy interests, the lines for an address and social security number are deleted; (3) paragraph four is amended to conform to existing practice and require a successful purchaser to pay the documentary stamps on the certificate of title; (4) paragraph six is amended to accommodate the possibility that there may be multiple defendants, to adapt to the requirements of section 45.0315, Florida Statutes (2009), stating that the right of redemption expires upon the filing of the certificate of sale, unless otherwise specified in the judgment, to recognize the potential survival of certain liens after foreclosure as provided in chapter 718 (the Condominium Act) and chapter 720 (Homeowners' Association), Florida Statutes (2009), and to allow a purchaser to obtain a writ of possession from the clerk of court without further order of the