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Please PRINT, place in three ring binder with TYPED label that says 2010 Residential Foreclosure bench book. Without a label, I will not find it. Put in a big binder, as I expect to add more to it. Thanks

# **RESIDENTIAL FORECLOSURE BENCH BOOK**

Prepared by

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## **Introduction**

1. Foreclosure is the enforcement of a security interest by judicial sale of collateral. All mortgages shall be foreclosed of equity. § 702.01, Fla. Stat. (2010).

2. **Definitions:**

(a) **Mortgage:** any written instrument securing the payment of money or advances including liens to secure payment of assessments for condominiums, cooperatives and homeowners' associations. § 702.09, Fla. Stat. (2010).

A mortgage creates only a specific lien against the property; it is not a conveyance of legal title or of the right of possession. § 697.02, Fla. Stat. (2010); *Fla. Nat'l. Bank & Trust Co. of Miami v. Brown*, 47 So. 2d 748 (1949).

(b) **Mortgagee:** refers to the lender; the secured party or holder of the mortgage lien. § 721.82(6), Fla. Stat. (2010).

(c) **Mortgagor:** refers to the obligor or borrower; the individual or entity who has assumed the obligation secured by the mortgage lien. § 721.82(7), Fla. Stat. (2010). The mortgagor holds legal title to the mortgaged property. *Hoffman v. Semet*, 316 So. 2d 649, 652 (Fla. 4th DCA 1975).

3. To foreclosure the mortgage lien and extinguish equities of redemption, secured parties must file a civil action. § 45.0315, Fla. Stat. (2010).

## **Lender's Right to Foreclose**

1. Constitutional obligation to uphold mortgage contract and right to foreclose. F. S. A. Const. Art 1 § 10.

(a) Right unaffected by defendant's misfortune. *Lee County Bank v. Christian Mut. Found., Inc.*, 403 So. 2d 446, 449 (Fla. 2d DCA 1981); *Morris v. Waite*, 160 So. 516, 518 (Fla. 1935).

(b) Right not contingent on mortgagor's health, good fortune, ill fortune, or the regularity of his employment. *Home Owners' Loan Corp. v. Wilkes*, 178 So. 161, 164 (Fla. 1938).

(c) Contract impairment or imposition of moratorium is prohibited by court. *Lee County Bank v. Christian Mut. Foundation, Inc.*, 403 So. 2d 446, 448 (Fla. 1981).

## **Default**

1. Right to foreclosure accrues upon the mortgagor's default.
2. Basis for default:
  - (a) mortgagor's failure to tender mortgage payments; or
  - (b) impairment of security, including failure to pay taxes or maintain casualty insurance.

## **Acceleration**

1. Acceleration - gives the mortgagee the authority to declare the entire mortgage obligation due and payable immediately upon default.
2. Mortgage Acceleration Clause - confers a contract right upon the note or mortgage holder which he may elect to enforce upon default. *David v. Sun Fed. Sav. & Loan Ass'n.*, 461 So. 2d 93, 94 (Fla. 1984).
  - (a) Absent acceleration clause, lender can only sue for amount in default. *Kirk v. Van Petten*, 21 So. 286 (Fla. 1896).
3. Commencement - upon delivery of written notice of default to the mortgagor; prior notice is not required unless it is a contractual term. *Millett v. Perez*, 418 So. 2d 1067 (Fla. 3d DCA 1982); *Fowler v. First Sav. & Loan Ass'n. of Defuniak Springs*, 643 So. 2d 30, 34 (Fla. 1st DCA 1994), (filing of complaint is notice of acceleration).
4. Pre-acceleration - mortgagor may defeat foreclosure by the payment of arrearages, thereby reinstating the mortgage. *Pici v. First Union Nat'l. Bank of Florida*, 621 So. 2d 732, 733 (Fla. 2d DCA 1993).

## **Statute of Limitations**

1. Five year statute of limitations period - applies specifically to mortgage foreclosure actions. § 95.11(2)(c), Fla. Stat. (2010); *Farmers & Merch. Bank v. Riede*, 565 So. 2d 883, 885 (Fla. 1st DCA 1990).
2. Commencement of limitations period:
  - (a) General rule – commencement upon accrual of the cause of action; this occurs when the last element of the cause of action is satisfied (for example, default).

§ 95.031(1), Fla. Stat. (2010); *Maggio v. Dept. of Labor & Employment Sec.*, 910 So. 2d 876, 878 (Fla. 2d DCA 2005).

(b) A note or other written instrument - when the first written demand for payment occurs. *Ruhl v. Perry*, 390 So. 2d 353, 357 (Fla. 1980).

(c) Oral loan payable on demand - commencement upon demand for payment. *Mosher v. Anderson*, 817 So. 2d 812, 813 (Fla. 2002).

3. Tolling of the limitations period - acknowledgment of the debt or partial loan payments subsequent to the acceleration notice toll the statute of limitations. § 95.051(1)(f), Fla. Stat. (2010); *Cadle Company v. McCartha*, 920 So. 2d 144, 145 (Fla.5th DCA 2006).

(a) Tolling effect - starts the running anew of the limitations period on the debt. *Wester v. Rigdon*, 110 So. 2d 470, 474 (Fla. 1st DCA 1959).

### **Jurisdiction**

1. Court's judicial authority over real property based on *in rem* jurisdiction.

2. Two part test to establish *in rem* jurisdiction: (1) jurisdiction over the class of cases to which the case belongs, and (2) jurisdictional authority over the property or *res* that is the subject of the controversy. *Ruth v. Dept. of Legal Affairs*, 684 So. 2d 181, 185 (Fla. 1996).

(a) Class of case - jurisdictional parameters defined by Article V Section 5(b), Florida Constitution, implemented by Section 26.012(2)(g), Fla. Stat. (2010). *Alexdex Corp. v. Nachon Enter., Inc.*, 641 So. 2d 858 (Fla. 1994), (concurrent equity jurisdiction over lien foreclosures of real property that fall within statutory monetary limits). *Id.*, at 863.

(b) Jurisdictional authority over real property only in the circuit where the land is situated. *Hammond v. DSY Developers, LLC.*, 951 So. 2d 985, 988 (Fla. 2d DCA 2007). *Goedmakers v. Goedmakers*, 520 So. 2d 575, 578 (Fla. 1988); (court lacks *in rem* jurisdiction over real property located outside the court's circuit). If real property lies in two counties, the foreclosure suit may be maintained in either county, however, the notice of sale must be published in both. § 702.04, Fla. Stat. (2010).

## **Parties to the Foreclosure Action**

### **Plaintiff**

1. Must be the owner/holder of the note as of the date of filing suit. *Jeff-Ray Corp. v. Jacobsen*, 566 So. 2d 885 (Fla. 4th DCA 1990); see also, *WM Specialty Mortgage, LLC v. Salomon*, 874 So. 2d 680, 682 (Fla. 4th DCA 2004).

(a) The holder of a negotiable instrument means the person in possession of the instrument payable to bearer or to the identified person in possession. § 671.201(21), Fla. Stat. (2010).

(1) Endorsement in blank – where unsigned and unauthenticated, an original note is insufficient to establish that the plaintiff is the owner and holder of the note. Must have affidavits or deposition testimony establishing plaintiff as owner and holder. *Riggs v. Aurora Loan Services, LLC*, 2010 WL 1561873 (Fla. 4th DCA 4/21/10).

(b) The holder may be the owner or a nominee, such as a servicer, assignee or a collection and litigation agent. Rule 1.210(a), Fla. R. Civ. P. (2010) provides that an action may be prosecuted in the name of an authorized person without joinder of the party for whose benefit the action is brought. See also, *Kumar Corp. v. Nopal Lines, Ltd.*, 462 So. 2d 1178, 1184 (Fla. 3d DCA 1985).

(c) Plaintiff's nominee has standing to maintain foreclosure based on real party in interest rule. *Mortgage Electronic Registration Systems, Inc. v. Revoredo*, 955 So. 2d 33 (Fla. 3d DCA 2007), (*MERS* was the holder by delivery of the note); *Mortgage Elec. Registration Systems, Inc. v. Azize*, 965 So. 2d 151 (Fla. 2d DCA 2007); *Philogene v. ABN AMRO Mortgage Group, Inc.*, 948 So. 2d 45 (Fla. 4th DCA 2006).

2. Assignment of note and mortgage - Plaintiff should assert assignee status in complaint. Absent formal assignment of mortgage or delivery, the mortgage in equity passes as an incident of the debt. *Perry v. Fairbanks Capital Corp.*, 888 So. 2d 725, 726 (Fla. 5th DCA 2004); *Johns v. Gillian*, 134 Fla. 575, 579 (Fla. 1938); *Warren v. Seminole Bond & Mortg. Co.*, 127 Fla. 107 (Fla. 1937), (security follows the note, the assignee of the note secured by a mortgage is entitled to the benefits of the security). Assignments must be recorded to be valid against creditors and subsequent

purchasers. § 701.02, Fla. Stat. (2010). See also, *Glynn v. First Union Nat'l. Bank*, 912 So. 2d 357, 358 (Fla. 4th DCA 2005).

(a) No requirement of a written and recorded assignment of the mortgage to maintain foreclosure action where evidence establishes plaintiff as owner and holder of the note on date of filing suit. *Perry*, 888 So. 2d at 726; *WM Specialty Mortgage, LLC*, 874 So. 2d at 682; *Chem. Residential Mortgage v. Rector*, 742 So. 2d 300 (Fla. 1st DCA 1998); *Clifford v. Eastern Mortg. & Sec. Co.*, 166 So. 562 (Fla. 1936). However, the incomplete, unsigned and unauthenticated assignment of mortgage attached as an exhibit to purported mortgage holder and note holder's response to motion to dismiss did not constitute admissible summary judgment evidence sufficient to establish standing. *BAC Funding Consortium, Inc. ISAOA/ATIMA v. Jean Jacques*, 2010 WL 476641 (Fla. App. 2 DCA Feb. 12, 2010). If plaintiff has an assignment of mortgage recorded prior to the date of filing suit, then he can enforce even if possession of note never physically delivered. Florida courts recognize constructive delivery. "The absence of the note does not make a mortgage unenforceable." *Lawyers Title Ins. Co. Inc v. Novastar Mortgage, Inc.*, 862 So. 2d 793, 798 (Fla. 4th DCA 2004). Assignment may be by physical delivery (provide evidence) or by written assignment.

3. MERS – What is it? Mortgage Electronic Registration Systems is a corporation which maintains an electronic registry tracking system of servicing and ownership rights to mortgages throughout the United States. In many cases MERS is the mortgagee of record and is identified in the mortgage. On each MERS loan there is an 18 digit number used for tracking. Through the MERS servicer ID number, homeowners can identify their lender with borrower name and property address.

4. Since the promissory note is a negotiable instrument, plaintiff must present the original note or give a satisfactory explanation for its absence. § 90.953(1), Fla. Stat. (2010); *State Street Bank and Trust Co. v. Lord*, 851 So. 2d 790, 791 (Fla. 4th DCA 2003). A satisfactory explanation includes loss, theft, destruction and wrongful possession of the note. § 673.3091(1), Fla. Stat. (2010). Reestablishment of the note is governed by § 673.3091(2), Fla. Stat. (2010).



### **Necessary and Proper Defendants**

1. The owner of the fee simple title - only indispensable party defendant to a foreclosure action. *English v. Bankers Trust Co. of Calif., N. A.*, 895 So 2d 1120, 1121 (Fla. 4th DCA 2005). Foreclosure is void if titleholder omitted. *Id.* If a spouse fails to sign the mortgage, lender may still foreclose on property owned by husband and wife when both spouses knew of loan and purchased in joint names. *Countrywide Home Loans v. Kim*, 898 So. 2d 250 (Fla. 2005).

(a) Indispensable parties defined - necessary parties so essential to a suit that no final decision can be rendered without their joinder. *Sudhoff v. Federal Nat'l. Mortgage Ass'n.*, 942 So. 2d 425, 427 (Fla. 5th DCA 2006).

2. Failure to join other necessary parties - they remain in the same position as they were in prior to foreclosure. *Abdoney v. York*, 903 So. 2d 981, 983 (Fla. 2d DCA 2005).

3. Omitted party - only remedies are to compel redemption or the re-foreclosure in a suit de novo. *Id.*; *Quinn Plumbing Co. v. New Miami Shores Corp.*, 129 So. 2d 690, 693 (Fla. 1930).

4. Death of titleholder prior to entry of final judgment - beneficiaries of the titleholder and the personal representative are indispensable parties. *Campbell v. Napoli*, 786 So. 2d 1232 (Fla. 2d DCA 2001).

(a) If indispensable parties not joined, action abated pending proper joinder. *Id.* As such, suit against a decedent alone will result in abatement.

(b) Post-judgment death of titleholder, these parties are not deemed indispensable parties. *Davis v. Scott*, 120 So. 1 (Fla. 1929).

5. Necessary parties to the foreclosure action - all subordinate interests recorded or acquired subsequent to the mortgage.

(a) Includes: junior mortgagees, holders of judgments and liens acquired after the superior mortgage, lessees and tenants/parties in possession of the real property. *Posnansky v. Breckenridge Estates Corp.*, 621 So. 2d 736, 737 (Fla. 4th DCA 1993); *Commercial Laundries, Inc., v. Golf Course Towers Associates*, 568 So. 2d 501, 502

(b) If junior lien holders are not joined, their rights in the real property survive the foreclosure action.

(c) Joinder of original parties to the deed or mortgage are essential when a reformation count is needed to remedy an incorrect legal description contained in the deed and/or mortgage. *Chanrai Inv., Inc. v. Clement*, 566 So. 2d 838, 840 (Fla. 5th DCA 1990). As such, the original grantor and grantee are necessary parties in an action to reform a deed. *Id.*

6. Prior titleholders that signed the note and mortgage do not have to be named in the foreclosure action unless:

(a) Mortgagee seeks entry of a deficiency judgment against the prior unreleased mortgagors in the foreclosure action. *PMI Ins. Co. v. Cavendar*, 615 So. 2d 710, 711 (Fla. 3d DCA 1993).

### **Superior Interests**

1. First or senior mortgagees are never necessary or proper parties to the foreclosure action by the junior mortgagee. *Garcia v. Stewart*, 906 So. 2d 1117, 1119 (Fla. 4th DCA 2005); *Poinciana Hotel of Miami Beach, Inc. v. Kasden*, 370 So. 2d 399, 401 (Fla. 3d DCA 1979).

(a) Senior liens are unaffected by the foreclosure of a junior mortgage.

2. **Purchase money mortgage defined** - proceeds of the loan are used to acquire the real estate or to construct improvements on the real estate. § 7.2(a), Restatement (Third) of Property; Mortgages (2008). The purchase and conveyance of real property occur simultaneously and are given as security for a purchase money mortgage.

(a) Purchase money mortgages - priority over all prior claims or liens that attach to the property through the mortgagor, even if latter be prior in time. *BancFlorida v. Hayward*, 689 So. 2d 1052, 1054 (Fla. 1997); *Sarmiento v. Stockton, Whatley, Davin & Co.*, 399 So. 2d 1057, 1058 (Fla. 3d DCA 1981).

(1) Priority does not extend beyond the amount of the purchase money advanced. *Citibank v. Carteret Sav. Bank, F.A.*, 612 So. 2d 599, 601 (Fla. 4th DCA 1992).

### **Association Liens and Assessments**

1. Condominium Associations - Section 718.116(1)(b), Fla. Stat. (2010) establishes the liability of the first mortgagee, its successor or purchaser for condominium assessments and maintenance as the lesser of:

(a) unit's unpaid common expenses and regular periodic assessments which came due 6 months prior to title acquisition; or

(b) one per cent of the original mortgage debt (provided condominium association is joined as a defendant).

(1) The law is clear that the purchaser of a condominium unit has liability for unpaid condominium assessments. § 718.1176, Fla. Stat (2010). This statutory cap, limits the liability of foreclosing mortgagees for unpaid condominium assessments that become due prior to acquisition of title. This safe harbor applies only to the first mortgagee or a subsequent holder of the first mortgage. *Bay Holdings, Inc. v. 2000 Island Boulevard Condo. Ass'n.*, 895 So. 2d 1197 (Fla. 3d DCA 2005). The term "successor or assignee" as used with respect to a first mortgagee includes only a subsequent holder of the first mortgage. § 718.116(1)(g), Fla. Stat. (2010). Other entities that acquire title are not entitled to this limitation of liability and are "jointly and severally liable for all unpaid assessments that come due up to the time of transfer of title." § 718.116(1)(a), Fla. Stat. (2010).

2. Homeowners' Association's - Section 720.3085(2)(c)(1), Fla. Stat. (2010) establishes the liability of the first mortgagee, its successor or purchaser for homeowner's assessments and maintenance as the lesser of:

(a) parcel's unpaid common expenses and regular periodic or special assessments which accrued 12 months prior to acquisition of title; or

(b) one per cent of the original mortgage debt.

(c) Homeowners' Association's lien for assessments had priority over purchase money mortgage where Association's declaration of covenants contained express

provision establishing priority. *Ass'n. of Poinciana Vill. v. Avatar Props.*, 724 So. 2d 585, 587 (Fla. 5th DCA 1999).

(d) The limitations on the first mortgagee's liability only apply if the lender filed suit and initially joined the homeowner's association as a defendant. § 720.3085(2)(c), Fla. Stat. (2010).

(e) Statutory revisions of the 2008 Legislature failed to remedy the potential super-priority of liens recorded prior to July 1, 2008. (Prior statutory version amended by the 2007 Legislature gave homeowner's association liens a priority, even if the mortgage was filed first in time.) Arguably, many homeowners' associations have subordination language in their declaration of covenants providing that their lien is subordinate to the mortgage. However, the subordination language is not standard in all declarations. Any challenge to the priority if the mortgage will likely be resolved on the basis of impairment of contract.

3. "Reverse foreclosures" defined – where association takes title and pursues lender or where association sets done the motion for summary judgment due to delays by lenders.

4. Cannot force lenders to pay association fees during pendency of foreclosure. *U. S. Bank Nat'l. Ass'n. as Trustee v. Tadmire*, 2009 WL 4281301 (Fla. 3d DCA 12/2/09).

### **Judgment Liens**

1. Section 55.10(1), Fla. Stat. (2010) applies to judgment liens.

(a) Requirements: (1) must contain address of the party in the judgment or in an accompanying affidavit; and (2) a certified copy of judgment lien must be recorded in the official records of the county.

(b) Judgment liens recorded after July 1, 1994 retain their judgment lien status for a period of 10 years from recording. A judgment lien is renewable by recording a certified copy of the judgment containing a current address prior to the expiration of the judgment lien. § 55.10(2), Fla. Stat. (2010).

### **Filing of the Lis Pendens**

1. Filing of lis pendens - cuts off the rights of any person whose interest arises after filing. *Bowers v. Pearson*, 135 So. 562 (Fla. 1931).

(a) Constitutes bar to the enforcement against the subject real property of any other unrecorded interests and liens unless the holder of the unrecorded interest intervenes within twenty days of the notice of the lis pendens. § 48.23(1)(b), Fla. Stat. (2010).

2. Validity of a notice of lis pendens is one year from filing. § 48.23(2), Fla. Stat. (2010).

(a) Exception: One year period may be tolled by the trial court's exercise of discretion or appellate review. *Olesh v. Greenberg*, 978 So. 2d 238, 242 (Fla. 5th DCA 2008); *Vonmitschke-Collande v. Kramer*, 841 So. 2d 481, 482 (Fla. 3d DCA 2002).

3. Lis pendens automatically dissolved upon dismissal of foreclosure. Rule 1.420(f), Fla. R. Civ. P. (2010).

(a) Lis pendens revived or reinstated upon the reversal of dismissal. *Vonmitschke-Collande*, 841 So. 2d at 482.

### **The Foreclosure Complaint**

1. Florida Supreme Court Form for foreclosure - Form 1.944, Fla. R. Civ. P. (2010). Requisite allegations assert: jurisdiction, default, acceleration and the legal description of the real property. As of 2/11/10, complaint must be verified. Rule 1.110(b), Fla. R. Civ. P. (2010).

(a) Plaintiff must allege that he is the present owner and holder of the note and mortgage. *Edason v. Cent. Farmers Trust Co.*, 129 So. 698, 700 (Fla. 1930).

(b) If plaintiff is a nonresident corporation, it must comply with the condition precedent of filing a nonresident bond, upon commencement of the action. § 57.011, Fla. Stat. (2010). If plaintiff has failed to file the requisite bond within 30 days after commencement, the defendant may move for dismissal (after 20 days notice to plaintiff).

(c) Rule 1.130(a), Fla. R. Civ. P. (2010) mandates that a copy of the note and mortgage be attached to the complaint. *Eigen v. FDIC*, 492 So. 2d 826 (Fla. 2d DCA 1986).

(d) If note and mortgage assigned, complaint should allege assignment. Attachment of the assignment is preferred but may not be required since the cause of action is based on the mortgage; not the assignment. Rule 1.130(a), Fla. R. Civ. P. (2010), *WM Specialty Mortgage, LLC v. Salomon*, 874 So. 2d 680, 682 (Fla. 4th DCA 2004); *Chemical Residential Mortgage v. Rector*, 742 So. 2d 300 (Fla. 1st DCA 1998); *Johns v. Gillian*, 184 So. 140, 144 (Fla. 1938).

(e) Junior lien holders - allegation is sufficient if it states that the interest of a defendant accrued subsequent to the mortgage and he is a proper party. *InterNat'l. Kaolin Co. v. Vause*, 46 So. 3, 7 (Fla. 1908).

(f) Federal tax lien allegation must state interest of the United States of America, including: the name and address of the taxpayer, the date and place the tax lien was filed, the identity of the Internal Revenue office which filed the tax lien and if a notice of tax lien was filed. Title 28 U. S. C. § 2410(b). A copy of the tax lien must be attached as an exhibit.

(g) Local taxing authority or State of Florida party defendant - allegation should state with particularity the nature of the interest in the real property. § 69.041(2), Fla. Stat. (2010).

(h) Complaint must include statement of default. Default based on unpaid taxes or insurance must be allege default with particularity. *Siahpoosh v. Nor Props.*, 666 So. 2d 988, 989 (Fla. 4th DCA 1996).

(i) Complaint should allege compliance with condition precedent, particularly notices.

(j) Legal description of the subject real property.

(k) Attorney fees - must be pled or it is waived. *Stockman v. Downs*, 573 So. 2d 835, 838 (Fla. 1991). Allegation as to obligation to pay a reasonable attorney fee is sufficient to claim entitlement. *Wallace v. Gage*, 150 So. 799, 800 (Fla. 1933). The claim of attorney fees is based on contractual language in the note and mortgage.

(l) Additional counts include: reestablishment of the note and reformation. Reestablishment of the note is necessary if the note is lost; reformation of the note is needed if material terms are missing. Reformation of the mortgage applies if there is a legal description discrepancy; reformation of deed is there is a deed problem.

(m) Deficiency judgment – if plaintiff seeks a deficiency, the guarantors must be sued.

### **Original Document Filing and Reestablishment of the Note**

1. Note - Lender is required to either present the original promissory note or give a satisfactory explanation for the lender's failure to present it prior to it being enforced. *Nat'l. Loan Investors, L.P. v. Joymar Associates*, 767 So. 2d 549, 550 (Fla. 3d DCA 2000).

(a) A limited exception applies to lost, destroyed or stolen instruments. *Id.*

2. A lost promissory note is a negotiable instrument. § 673.1041(1), Fla. Stat. (2008); *Thompson v. First Union Bank*, 643 So. 2d 1179 (Fla. 5th DCA 1994).

(a) Loss or unintentional destruction of a note does not affect its validity or enforcement.

3. Reestablishment of the lost note - An owner of a lost, stolen or destroyed instrument may maintain an action by showing proof of his ownership, facts that prevent the owner from producing the instrument and proof of the terms of the lost instrument. § 673.3091(2), Fla. Stat. (2004); *Lawyer's Title Ins. Co., Inc. v. Novastar Mortgage, Inc.*, 862 So. 2d 793, 798 (Fla. 4th DCA 2004); *Gutierrez v. Bermudez*, 540 So. 2d 888, 890 (Fla. 5th DCA 1989).

(a) Owner of note is not required to have held possession of the note when the loss occurred to maintain an action against the mortgagor. *Deaktor v. Menendez*, 830 So. 2d 124, 126 (Fla. 3d DCA 2002). Further, plaintiff is not required to prove the circumstances of the loss or destruction of the note to seek enforcement. *Id.*, at 127. Plaintiff must show only that it was entitled to enforce the note at the time of loss or that it has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred.

§ 673.3091(1)(a), Fla. Stat. (2010); *MERS v. Badra*, 991 So. 2d 1037, 1039 (Fla. 4th DCA 2008).

(b) If plaintiff is not in possession of the original note and did not reestablish it, plaintiff cannot foreclose on the note and mortgage. § 673.3091(1), Fla. Stat. (2004); *Dasma Invest., LLC v. Realty Associates Fund III, L.P.* 459 F. Supp. 2d 1294, 1302 (S.D. Fla. 2006).

(c) The filing of a duplicate copy of the note is sufficient to satisfy statutory requirements in a foreclosure action. *Perry v. Fairbanks Capital Corp.*, 888 So. 2d 725 (Fla. 5th DCA 2004). If there is no copy, Plaintiff should file a lost note affidavit, ledger or a summary of loan terms.

(1) **Checklist for lost note affidavit:**

- (a) original principal balance;
- (b) signators and date note executed;
- (c) rate of interest;
- (d) unpaid balance and default date;
- (e) affiant status must be banking representative with knowledge of the particular loan;
- (f) indemnity language, precluding subsequent foreclosure judgment on the same note.

(d) Where the original note is lost, the court may require indemnification of the borrower for subsequent prosecution on the note and may require a bond to secure same. *Lovingood v. Butler Construction Co.*, 131 So. 126, 135 (Fla. 1930). Consider bonds particularly where there is a securitized trust.

1. Mortgage – Copy of mortgage is sufficient. *Perry*, 888 So. 2d at 726.

(a) Mortgage must contain correct legal description. *Lucas v. Barnett Bank of Lee County*, 705 So. 2d 115, 116 (Fla. 2d DCA 1998). If not, final judgment must be set aside. However, this can be corrected prior to final judgment.



### **Fair Debt Collection Practices Act (FDCPA)**

1. Purpose - eliminate abusive debt collection practices by debt collectors and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692(e).
2. Some Florida courts held - attorneys engaged in regular foreclosure work met the general definition of debt collector and are subject to the FDCPA. *Sandlin v. Shapiro*, 919 F. Supp. 1564, 1567 (M.D. Fla. 1996), (law firm engaged in collection foreclosure work was considered a debt collector where the firm sent correspondence advising of payoff and reinstatement figures and directed mortgagors to pay the law firm).
3. Under FDCPA, a debt collector's obligation to send a Notice of Debt is triggered by an initial communication with the consumer. *McKnight v. Benitez*, 176 F. Supp. 1301, 1304 (M.D. Fla. 2001).

(a) Filing of suit is not "an initial communication which otherwise would have given rise to notice and verification rights." *Acosta v. Campbell*, 2006 WL 3804729 (M.D. Fla. 2006).

(b) Foreclosure law firms have adopted the practice of attaching to their complaint: "Notice Required under the Fair Debt Collection Practice Act." This notice held ineffective in *Martinez v. Law Offices of David J. Stern*, 266 B.R. 523 (Bank. S.D. Fla. 2001).

### **Mandatory Mediation of Homestead Foreclosures**

1. Based on the exponential increase in filings of mortgage foreclosure cases in the Eleventh Judicial Circuit Court, the Chief Judge implemented four Administrative Orders in the following sequence:

(a) Administrative Order 09-08 applies to all residential foreclosure actions involving homestead properties filed on or after May 1, 2009. AO 09-08 established the 11<sup>th</sup> Circuit Homestead Access to Mediation Program (CHAMP) mandating mandatory mediation of homestead foreclosures prior to the matter being set for final hearing. At the time of filing the complaint, Plaintiff is required to transmit to the

Program Manager, the Collins Center, a notice form (Form A) with borrower's contact information. Within five days of filing the complaint, Plaintiff must tender a cost check in the amount of \$750.00 to cover the administrative costs of the mediation. The Collins Center responsibilities include: contacting the borrower, referring the borrower to financial counseling and making financial documentation available electronically to the Plaintiff. Plaintiff's counsel and the borrower are required to be physically present at mediation; the lender's representative must attend, but is allowed to participate by telephone. Within ten days of the completion of the mediation, the mediator must report the mediation results to the court.

(b) Administrative Order 09-09 revised the following forms: the civil cover sheet, Plaintiff's certification of settlement authority, Plaintiff's certification of residential mortgage foreclosure case status and the final judgment of foreclosure.

This Administrative Order specifically exempts condominium and homeowners' association fee foreclosures, private investor mortgage foreclosures, foreclosures of non-homestead properties and construction lien foreclosures.

(c) Administrative Order 09-09 A1 acknowledged the statutory authority of the Clerk of the Courts to conduct the sale of real or personal property by electronic means. This Administrative Order further proscribed adherence to certain procedures concerning tenant occupied residential properties under the "Protecting Tenants at Foreclosure Act of 2009." Amending the specific format of the final judgment of foreclosure, this Administrative Order prohibited the issuance of immediate writs of possession.

(d) Administrative Order 09-18 responded to the Clerk of the Court's request for formal approval to conduct on-line auctions, in lieu of on-site auctions for the sale of real property.

2. On December 28, 2009, the Florida Supreme Court issued Administrative Order 09-54, adopting the recommendations of the Task Force on Residential Mortgage Foreclosure Cases and establishing a uniform, statewide managed mediation program. The Florida Supreme Court approved the Task Force's Model Administrative Order, with minor changes to be implemented by each circuit chief judge.

3. On February 26, 2010, the Eleventh Judicial Circuit Court issued Administrative Order 10-03 A1 requiring mandatory mediation of all homestead mortgage foreclosure actions subject to the federal Truth in Lending Act, Regulation Z. Administrative Order 10-03 A 1 applies to actions filed after March 29, 2010. Specifically exempted from this Administrative Order are condominium and homeowners' association fee foreclosures and mechanics and construction lien foreclosures. This Administrative Order constitutes a formal referral to mediation through the Residential Mortgage Foreclosure Mediation (RMFM) Program; parties are ineligible for default judgment, a summary judgment or final hearing until they have fully complied with mediation requirements.

Basic Procedural Requirements of Administrative Order 10-03 A1 include:

(a) When suit is filed, plaintiff must file a completed Form A with the Clerk listing the last known mailing address and phone number for each party. One business day after filing the complaint, plaintiff must transmit Form A to the Program Manager of the RMFM along with the case number of the action. The Collins Center for Public Policy, Inc. is the contract Program Manager in the Eleventh Judicial Circuit. At the time of the filing of the complaint, the Plaintiff must tender RMFM fees in the amount of \$400.00; the balance of fees in the amount of \$350.00 must be paid by Plaintiff within 10 days after notice of the mediation conference.

(b) Upon receipt of Form A, the Program Manager must contact the borrower and refer the borrower an approved mortgage foreclosure counselor. Foreclosure counseling must be completed no later than 30 days from the Program Manager's initial contact with the borrower. If the Program Manager is unable to contact the borrower within this time frame, the borrower will have been deemed to elect nonparticipation in the RMFM Program.

(c) The Program Manager must transmit the borrower's financial disclosure for mediation no later than 60 days after the Program Manager receives Form A from Plaintiff.

(d) The Program Manager shall schedule a mediation session no earlier than 60 days and no later than 120 days after suit is filed.

(e) Plaintiff's representative may appear by telephone upon 5 days notice prior to the mediation; plaintiff's attorney, the borrower and the borrower's attorney, if any, must attend in person. The court may dismiss the action without prejudice or impose other sanctions for failure to attend. Within 10 days after completion of mediation, the mediator must issue a report advising the court as to the parties' attendance and result.

### **Service of Process**

1. Due service of process is essential to satisfy jurisdictional requirements over the subject matter and the parties in a foreclosure action. Rule 1.070, Fla. R. of Civ. P. (2010) and Chapters 48 and 49 of the Florida Statutes.
2. Service of process must be made upon the defendant within 120 days after the filing of the initial pleading. Rule 1.070(j), Fla. R. Civ. P. (2010). Absent a showing of excusable neglect or good cause, the failure to comply with the time limitations may result in the court's dismissal of the action without prejudice or the dropping of the defendant.

### **Personal Service**

1. Section 48.031 (1), Fla. Stat. (2010) requires that service of process be effectuated by a certified process server on the person to be served by delivery of the complaint or other pleadings at the usual place of abode or by leaving the copies at the individual's place of abode with any person residing there, who is 15 years of age or older and informing them of the contents. § 48.27, Fla. Stat. (2010).

(a) Ineffective service - Leaving service of process with a doorman or with a tenant, when the defendant does not reside in the apartment is defective service. *Grosheim v. Greenpoint Mortgage Funding, Inc.*, 819 So. 2d 906, 907 (Fla. 4th DCA 2002). Evidence that person resides at a different address from service address is ineffective service. *Alvarez v. State Farm Mut. Ins. Co.*, 635 So. 2d 131 (Fla. 3d DCA 1994).

(b) Judgment subject to collateral attack where plaintiff did not substantially comply with the statutory requirements of service.

2. Substitute service authorized by Section 48.031 (2), Fla. Stat. (2010). Substitute service may be made upon the spouse of a person to be served, if the cause of action is not an adversary proceeding between the spouse and the person to be served, and if the spouse resides with the person to be served.

(a) Statutes governing service of process are strictly construed. *General de Seguros, S.A. v. Consol. Prop. & Cas. Ins. Co.*, 776 So. 2d 990, 991 (Fla. 3d DCA 2001). (reversed with directions to vacate default judgment and quash service of process since substituted service was not perfected).

(b) Use of private couriers or Federal Express held invalid. *Id.*; *FNMA v. Fandino*, 751 So. 2d 752, 753 (Fla. 3d DCA 2000), (trial courts voiding of judgment affirmed based on plaintiff's failure to strictly comply with substitute service of process which employed Fedex).

(c) Evading service of process – defined by statute as concealment of whereabouts. § 48.161(1), Fla. Stat. (2010); *Bodden v. Young*, 422 So. 2d 1055 (Fla. 4th DCA 1982).

(1) The Florida case which clearly illustrates concealment is *Luckey v. Smathers & Thompson*, 343 So. 2d 53 (Fla. 3d DCA 1977). In *Luckey*, the defendant had "for the purpose of avoiding all legal matters, secreted himself from the world and lived in isolation in a high security apartment refusing to answer the telephone or even to open his mail." *Id.* at 54. The Third District Court of Appeal affirmed the trial court's decision denying defendant's motion to vacate the writ of execution and levy of sale based on a record of genuine attempts to serve the defendant. The Third District Court further opined that "there is no rule of law which requires that the officers of the court be able to breach the self-imposed isolation in order to inform the defendant that a suit has been filed against him." *Id.*

(2) Effective proof of evading service must demonstrate plaintiff's attempts in light of the facts of the case (despite process server's 13 unsuccessful attempts at service, evasion was not proved based on evidence that the property was occupied and defendant's vehicle parked there.) *Wise v. Warner*, 932 So. 2d

591, 592 (Fla. 5th DCA 2006). Working whose place of employment was known to the sheriff was not concealing herself or avoiding process, sheriff only attempted service at the residence during work hours. *Styles v. United Fid. & Guaranty Co.*, 423 So. 2d 604 (Fla. 3d DCA 1982).

(3) Statutory requirements satisfied if papers left at a place from which the person to be served can easily retrieve them and if the process server takes reasonable steps to call the delivery to the attention of the person to be served. *Olin Corp. v. Haney*, 245 So. 2d 669 (Fla 4th DCA 1971).

3. Service on a corporation - may be served on the registered agent, officer or director. Section 48.081(2)(b), Fla. Stat. (2010) - if the address provided for the registered agent, officer, director, or principal place of business is a residence or private mailbox, service on the corporation may be made by serving the registered agent, officer or director in accordance with § 48.031, Fla. Stat. (2010).

### **Constructive Service by Publication**

1. Section 49.011(1), Fla. Stat. (2010) identifies the enforcement of a claim of lien to any title or interest in real property such as foreclosure actions.

2. Sections 49.021-40.041, of the Florida Statutes govern constructive service or service by publication. Constructive service statutes are strictly construed against the party seeking to obtain service. *Levenson v. McCarty*, 877 So. 2d 818, 819 (Fla. 4th DCA 2004).

3. Service by publication - only available when personal service cannot be made. *Godsell v. United Guaranty Residential Insurance*, 923 So. 2d 1209, 1212 (Fla. 5th DCA 2006), (service by publication is void when plaintiff knew of the defendant's Canadian residency, but merely performed a skip trace in Florida and made no diligent search and inquiry to locate Canadian address); *Gross v. Fidelity Fed. Sav. Bank of Fla.*, 579 So. 2d 846, 847 (Fla. 4th DCA 1991), (appellate court reversed and remanded to quash service of process and default based on plaintiff's knowledge of defendant's out of state residence address and subsequent failure to attempt personal service).

(a) Plaintiff must demonstrate that an honest and conscientious effort, reasonably appropriate to the circumstances, was made to acquire the necessary information and comply with the applicable statute. *Dor Cha, Inc. v. Hollingsworth*, 8786 So. 2d 678, 679 (Fla. 4th DCA 2004), (default judgment reversed based on plaintiff's crucial misspelling of defendant's name and subsequent search on wrong individual).

(b) Condition precedent to service by publication - Section 49.041, Fla. Stat., (2010), requires that the plaintiff file a sworn statement that shows (1) a diligent search and inquiry has been made to discover the name and residence of such person, (2) whether the defendant is over the age of 18, or if unknown, the statement should set forth that it is unknown, and (3) the status of the defendant's residence, whether unknown or in another state or country. Section 49.051, Fla. Stat. (2010) applies to service by publication on a corporation.

(c) Plaintiff is entitled to have the clerk issue a notice of action subsequent to the filing of its sworn statement. Pursuant to § 49.09, Fla. Stat., (2010), the notice requires defendant to file defenses with the clerk and serve same upon the plaintiff's attorney within 30 days after the first publication of the notice.

(1) Notice - published once each week for two consecutive weeks, with proof of publication filed upon final publication.

§49.10(1)(c)(2), Fla. Stat. (2010).

(d) Affidavit of diligent search - need only allege that diligent search and inquiry have been made; it is not necessary to include specific facts. *Floyd v. FNMA*, 704 So. 2d 1110, 1112 (Fla. 5th DCA 1998), (final judgment and sale vacated based on plaintiff's failure to conduct diligent search to discover deceased mortgagor's heirs residence and possession of the subject property). However:

(1) Better practice is to file an affidavit of diligent search that contains all details of the search. *Demars v. Vill. of Sandalwood Lakes Homeowners Ass'n.*, 625 So. 2d 1219, 1222 (Fla. 4th DCA 1993), (plaintiff's attorney failed to conduct diligent search and

inquiry by neglecting to follow up on leads which he knew were likely to yield defendant's residence).

(a) **Diligent search and inquiry checklist**

Form 1.924, Fla. R. Civ. P. (2010) contains a basic checklist of a diligent search and inquiry to establish constructive service. This Form adds consideration of inquiry of tenants as to the location of the owner/landlord of tenant occupied property. Further, the Form utilizes the following sources:

- (1) Inquiry as to occupants in possession of the subject property;
- (2) Inquiry of neighbors;
- (3) Public records search of criminal/civil actions;
- (4) Telephone listings;
- (5) Tax collector records;
- (6) Utility Co. records;
- (7) Last known employer;
- (8) U. S. Post Office;
- (9) Local police department, correctional department;
- (10) Local hospitals;
- (11) Armed Forces of the U.S.;
- (12) Department of Highway Safety & Motor Vehicles;
- (13) School board enrollment verification, if defendant has children;
- (14) An inquiry of the Division of Corporations, State of Florida, to determine if the defendant is an officer, director or registered agent;
- (15) Voter registration records.

(f) The plaintiff bears the burden of proof to establish the legal sufficiency of the affidavit when challenged. *Id.* If constructive service of process is disputed, the trial court has the duty of determining: (1) if the affidavit of diligent search is legally sufficient; and (2) whether the plaintiff conducted an adequate search to locate the defendants. *First Home View Corp. v. Guggino*, 10 So. 3d 164, 165 (Fla. 3d DCA 2009).



(g) **Diligent search test** - whether plaintiff reasonably employed the knowledge at his command, made diligent inquiry, and exerted an honest and conscientious effort appropriate to the circumstances. *Shepherd v. Deutsche Bank Trust Co. Am.s*, 922 So. 2d 340, 343 (Fla. 5th DCA 2006), (reversed and voided judgment as to defendant wife based on plaintiff's failure to strictly comply with statute, when they had been informed of defendant's correct address in England). Plaintiff's reliance on constructive service, when a doorman in New York repeatedly informed the process server of the Defendant's location in Florida, reflects an insufficient amount of reasonable efforts to personally serve the defendant to justify the use of constructive service. *De Vico v. Chase Manhattan Bank*, 823 So. 2d 175, 176 (Fla. 3d DCA 2002). Similarly, failure to inquire of the most likely source of information concerning whereabouts of a corporation, or an officer or agent, does not constitute reasonable diligence. *Redfield Investments, A. V. V. v. Village of Pinecrest*, 990 So. 2d 1135, 1139 (Fla. 3d DCA 2008).

(h) Defective service of process - judgment based on lack of diligent search and inquiry constitutes improper service and lacks authority of law. *Batchin v. Barnett Bank of Southwest Fla.*, 647 So. 2d 211,213 (Fla. 2d DCA 1994).

(1) Judgment rendered void - when defective service of process amounts to no notice of the proceedings. *Shepherd*, 922 So. 2d at 345. Void judgment is a nullity that cannot be validated by the passage of time and may be attacked at any time. *Id.*

(2) Judgment rendered voidable - irregular or defective service actually gives notice of the proceedings. *Id.*

(i) Limitations of constructive service – only confers in rem or quasi in jurisdiction; restricted to the recovery of mortgaged real property.

(1) No basis for deficiency judgment - constructive service of process cannot support a judgment that determines an issue of personal liability. *Carter v. Kingsley Bank*, 587 So. 2d 567, 569 (Fla. 1st DCA 1991), (deficiency judgment cannot be obtained absent personal service of process).

### **Service of Process outside the State of Florida and in Foreign Countries**

1. Section 48.194(1), Fla. Stat., (2010) - authorizes service of process in the same manner as service within the state, by an officer in the state where the person is being served. Section states that service of process outside the United States may be required to conform to the provisions of Hague Convention of 1969 concerning service abroad of judicial and extrajudicial documents in civil or commercial matters.

2. The Hague Convention creates - appropriate means to ensure that judicial and extra-judicial documents to be served abroad shall be brought to the addressee in sufficient time. *Koechli v. BIP Int'l*, 861 So. 2d 501, 502 (Fla. 5th DCA 2003).

(a) Procedure - process sent to a designated central authority, checked for compliance, served under foreign nation's law, and certificate prepared which documents the place and date of service or an explanation as to lack of service. *Id.* (return by the central authority of a foreign nation of completed certificate of service was prima facie evidence that the authority's service on a defendant in that country was made in compliance with the Hague Convention and with the law of that foreign nation).

(b) Compliance issues - see *Diz v. Hellman Int'l. Nat'l. Forwarders*, 611 So. 2d 18 (Fla. 3d DCA 1992), (plaintiff provided a faulty address to the Spanish authorities and the trial judge entered a default judgment, which appellate court reversed).

3. Service by registered mail - authorized by Section 48.194(2), Fla. Stat. (2010). Permits service by registered mail to nonresidents where the address of the person to be served is known.

(a) Section 48.192(2)(b), Fla. Stat. (2010), provides that plaintiff must file an affidavit which sets forth the nature of the process, the date on which the process was mailed by registered mail, the name and address on the envelope containing the process that was mailed, the fact that the process was mailed by registered mail and was accepted or refused by endorsement or stamp. The return envelope from the attempt to mail process should be attached to the affidavit.

### **Service of process and timeshare real property:**

1. Foreclosure proceedings involving timeshare estates may join multiple defendants in the same action. § 721.83, Fla. Stat. (2010).
2. There are additional options to effectuating service of process for a timeshare foreclosure.

(a) Substitute service may be made upon the obligor's appointed registered agent. § 721.85(1), Fla. Stat. (2010).

(b) When quasi in rem or in rem relief only is sought, service may be made on any person whether the person is located inside or outside the state by certified or registered mail, addressed to the person to be served at the notice address. § 721.85(a), Fla. Stat. (2010).

### **Substitution of Parties**

1. Substitution is not mandatory; the action may proceed in the name of the original party. However, to substitute a new party based on a transfer of interest requires a court order. *Tinsley v. Mangonia Residence 1, Ltd.*, 937 So. 2d 178, 179 (Fla. 4th DCA 2006), Rule 1.260, Fla. R. Civ. P.
2. Order of substitution must precede an adjudication of rights of parties, including default. *Floyd v. Wallace*, 339 So. 2d 653 (Fla. 1976); *Campbell v. Napoli*, 786 So. 2d 1232 (Fla. 2d DCA 2001), (error to enter judgment without a real party against whom judgment could be entered).
3. When substitution is permitted, plaintiff must show the identity of the new party's interest and the circumstances.

### **Entry of Default**

1. Without proof of service demonstrating adherence to due process requirements, the Plaintiff is not entitled to entry of default or a default final judgment.

(a) Failure to effectuate service - places the jurisdiction in a state of dormancy during which the trial court or clerk is without authority to enter a default. *Armet*

*S.N.C. di Ferronato Giovanni & Co. v. Hornsby*, 744 So. 2d 1119, 1121 (Fla. 1st DCA 1999); *Tetley v. Lett*, 462 So. 2d 1126 (Fla. 4th DCA 1984).

2. Legal effect of default - admission of every cause of action that is sufficiently well-pled to properly invoke the jurisdiction of the court and to give due process notice to the party against whom relief is sought. *Fiera.Com, Inc. v. Digicast New Media Group, Inc.*, 837 So. 2d 451, 452 (Fla. 3d DCA 2003). Default terminates the defending party's right to further defend, except to contest the amount of unliquidated damages. *Donohue v. Brightman*, 939 So. 2d 1162, 1164 (Fla. 4th DCA 2006).

3. Plaintiff is entitled to entry of default if the defendant fails to file or serve any paper 20 days after service of process. Rule 1.040(a)(1), Fla. R. Civ. P. (2010).

(a) State of Florida has 40 days in which to file or serve any paper in accordance with Section 48.121, Fla. Stat. (2008).

(b) United States of America has 60 days to file under the provisions of 28 U.S.C.A. § 2410(b); Rule 12(a)(3), Fed. R. Civ. P.

4. **Service Members Civil Relief Act of 2003 (formerly, Soldier's & Sailors Act)**

(a) Codified in 50 App. U. S. C. A. § 521 - tolls proceedings during the period of time that the defendant is in the military service.

(b) Act precludes entry of default; there is no need for the service member to demonstrate hardship or prejudice based on military service. *Conroy v. Aniskoff*, 507 U.S. 511, 512 (1993). Service member with notice of the foreclosure action, may obtain a stay of the proceedings for a period of 9 months. 50 App. U. S. C. A. § 521 (d) was superseded by the Housing and Economic Recovery Act of 2008, § 2203, which expires on 12/31/10. Upon expiration, the original 90 day period will re-take effect.

(c) Determination of military status – to obtain default, plaintiff must file an affidavit stating:

(1) defendant is not in military service; or

(2) plaintiff is unable to determine if the defendant is in the military service. 50 App. U. S. C. A. § 521(b)(1).

(d) Unknown military status - the court may require the plaintiff to file a bond prior to entry of judgment. 50 App. U. S. C. A. § 521(b)(3).

5. Plaintiff is required to serve the defendant with notice of the application for default. Failure to notice defendant's attorney entry of subsequent default is invalid; rendering resulting judgment void. *U.S. Bank Nat'l. Ass'n. v. Lloyd*, 981 So. 2d 633, 634 (Fla. 2d DCA 2008).

6. Non-Military Affidavit required - must be based on: personal knowledge, attest to the fact that inquiry was made of the Armed Forces, and affiant must state that the defendant is not in the armed forces. *The Fla. Bar Re: Approval of Forms*, 621 So. 2d 1025, 1034 (Fla. 1993). Affidavits based on information and belief are not in compliance.

(a) Non-military affidavit is valid for one year.

### **Appointment of a Guardian ad Litem**

1. The best practice is appointment when unknown parties are joined and service effected through publication. For example, a guardian ad litem should be appointed to represent the estate of a deceased defendant or when it is unknown if the defendant is deceased. § 733.308, Fla. Stat. (2010).

(a) Section 65.061(2), Fla. Stat. (2010) states that a "guardian ad litem shall not be appointed unless it affirmatively appears that the interest of minors, persons of unsound mind, or convicts are involved."

(b) Rule 1.210(b), Fla. R. Civ. P. (2010) provides that the court "shall appoint a guardian ad litem for a minor or incompetent person not otherwise represented...for the protection of the minor or incompetent person." Similarly, Rule 1.511(e), Fla. R. Civ. P. (2010) maintains that "final judgment after default may be entered by the court at any time, but no judgment may be entered against an infant or incompetent person unless represented by a guardian."

## **Appointment of a Receiver**

1. During a foreclosure, appointment of a receiver for condominium and homeowners' associations is governed by statute, although it may also be authorized by association by-laws.

(a) Section 718.116(6)(c), Fla. Stat. (2010), provides that the court in its discretion may require the resident condominium unit owner to pay a reasonable rental for the unit. During the "pendency of the foreclosure action, the condominium association is entitled to the appointment of a receiver to collect the rent." *Id.*

(b) Similarly, Section 720.3085(1)(d), Fla. Stat. (2010) governs homeowners' associations. Post judgment, this Section provides that the court may require the parcel owner to pay a reasonable rent for the parcel. If the parcel is rented or leased during the pendency of the foreclosure, the homeowners' association is entitled to the appointment of a receiver. *Id.*

(c) Blanket motions for appointment of a receiver for units prior to the filing of a foreclosure action do not meet the requirements of either statutory provision.

2. The movant for appointment of a receiver for real property which does not qualify under the condominium or homeowners' association statutes must satisfy basic prerequisites. These basic prerequisites are the same legal standards applicable to non-foreclosure proceedings, as injunctive relief.

(a) This equitable prejudgment remedy must be exercised with caution as it is in derogation of the legal owner's fundamental right of possession of his property and only warranted if there is a showing that the secured property is being wasted or otherwise subject to serious risk of loss. *Alafaya Square Association, Ltd. v. Great Western Bank*, 700 So. 2d 38, 41 (Fla. 5th DCA 1997); *Twinjay Chambers Partnership v. Suarez*, 556 So. 2d 781, 782 (Fla. 2d DCA 1990); *Electro Mechanical Products, Inc. v. Borona*, 324 So. 2d 638 (Fla. 3d DCA 1976).

(b) In the absence of a showing that the property is being wasted or otherwise subject to serious risk of loss, appointment of a receiver is unjustified. *Seasons P'ship 1 v. Kraus-Anderson, Inc.*, 700 So. 2d 6061, 6062 (Fla. 2d DCA 1997).

(c) The party seeking appointment must show that there is a substantial likelihood that it will prevail on the merits at the conclusion of the case and must present sufficient proof that appointment of a receiver is warranted. *Keybank National Association v. Knuth, Ltd.*, 2009 WL 2448160, 2448161 (Fla. 3d DCA, Aug. 12, 2009).

(d) A final prerequisite to appointment of a receiver is that the movant must post a bond, for either the plaintiff or the receiver. Rule 1.620(c), Fla. Rules of Civ. P. (2010); *Boyd v. Banc One Mortgage Corp.*, 509 So. 2d 966,967 (Fla. 3d DCA 1987).

### **Summary Final Judgment of Foreclosure**

1. Legal standard – No genuine issue of material fact and movant is entitled to a judgment as a matter of law. Also, outstanding discovery can preclude summary judgment.
2. Burden of Proof - The plaintiff bears the burden of proof to establish the nonexistence of disputed issues of material fact. *Delandro v. Am.'s. Mortgage Servicing, Inc.*, 674 So. 2d 184, 186 (Fla. 3d DCA 1996); *Holl v. Talcott*, 191 So. 2d 40, 43 (Fla. 1966).
3. Content of motion for summary judgment – plaintiff should allege:
  - 1) execution of note and mortgage; 2) plaintiff's status as owner and holder (or representative); 3) date of default; 4) notice of default and acceleration; 5) amount due and owing; 6) relief sought; and 7) address affirmative defenses, if any.
4. Filing of the Motion - at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party. Rule 1.510(a), Fla. R. Civ. P. (2010). The motion for summary judgment, supporting affidavits and notice of hearing must be served on a defendant at least (20) twenty days before the summary judgment hearing. Rule 1.510(c), Fla. R. Civ. P. (2010); *Verizzo v. Bank of New York*, 2010 WL 711862 (Fla. 2 DCA Mar. 3, 2010); *Mack v. Commercial Industrial Park, Inc.*, 541 So. 2d 800, 801 (Fla. 4th DCA 1989).

(a) Opposition materials and evidence supportive of a denial of a motion for summary judgment must be identified. Rule 1.510(c), Fla. R. Civ. P. (2010). Notice of opposition must be mailed to the movant's attorney at least five days prior to the day of hearing or delivered no later than 5:00 P. M., (2) two business days prior to the day of the hearing on the summary judgment.

(b) The movant for summary judgment must factually refute or disprove the affirmative defenses raised, or establish that the defenses are insufficient as a matter of law. *Leal v. Deutsche Bank Nat'l. Trust Co.*, 21 So. 3d 907, 908 (Fla. 3d DCA 2009).

(c) Filing of cross motions is subject to the 20-day notice period. *Wizikowsji v. Hillsborough County*, 651 So. 2d 1223 (Fla. 2d DCA 1995).

5. Requirement for motion for summary judgment - due notice and a hearing. Proof of mailing of notice of the final summary judgment hearing created presumption that notice of hearing was received. *Blanco v. Kinas*, 936 So. 2d 31, 32 (Fla. 3d DCA 2006).

## 6. **Affidavits in support of Summary Judgment**

Affidavits in support of the motion must be made based on personal knowledge and set forth facts that would be admissible in evidence, and demonstrate that the affiant is competent to testify on the matters presented.

(a) Affidavit of Indebtedness – Must be signed by a custodian of business record with knowledge. In general, the plaintiff's affidavit itemizes:

- (1) property address,
- (2) principal balance,
- (3) interest (calculated from default up until the entry of judgment, when the mortgage provides for automatic acceleration upon default, *THFN Realty Co. v. Kirkman/Conroy, Ltd.*, 546 So. 2d 1158 (Fla. 5th DCA 1989). (best practice is to include per diem interest),
- (4) late charges (pre-acceleration only), *Fowler v. First Fed. Sav. & Loan Ass'n.*, 643 So. 2d 30, 33(Fla. 1st DCA 1994).),
- (5) prepayment penalties – unavailable in foreclosure actions, *Fla. Nat'l*



*Bank v. Bankatlantic*, 589 So. 2d 255, 259 (Fla. 1991), unless specifically authorized in note in the event of acceleration and foreclosure. *Feinstein v. Ashplant*, 961 So. 2d 1074 (Fla. 4th DCA 2007).

- (6) property inspections & appraisals,
- (7) hazard insurance premiums and taxes.

(b) Affidavit of Costs - This affidavit details:

- (1) the filing fee,
- (2) service of process,
- (3) and abstracting costs.

(c) Affidavit of attorney's time - references the actual time the attorney expended on the foreclosure file and references the actual hourly billable rate or the flat fee rate which the client has agreed to pay. The Fla. Supreme Court endorsed the lodestar method. *Bell v. U. S. B. Acquisition Co.*, 734 So. 2d 403, 406 (Fla. 1999). The hours may be reduced or enhanced in the discretion of the court, depending on the novelty and difficulty of questions involved. *Fla. Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145, 1150 (Fla. 1985). With regard to uncontested time, plaintiff is not required to keep contemporaneous time records since the lender is contractually obligated to pay a flat fee for that time. *Id.*

(d) Affidavit as to reasonableness of attorneys' fee - Affidavit of attorney's fee must be signed by a practicing attorney not affiliated with the plaintiff's firm, attesting to the rate as reasonable and customary in the circuit. Affiant should reference and evaluate the attorney fee claim based on the eight factors set forth in Rule 4-1.5(b)(1) Rules Regulating the Fla. Bar. Of these, relevant factors, such as the time and labor required, the customary fee in the locality for legal services of a similar nature, and the experience and skill of the lawyer performing the service must be examined. An award of attorney fees must be supported by expert evidence. *Palmetto Federal Savings and Loan Association v. Day*, 512 So. 2d 332 (Fla. 3d DCA 1987).

- (1) Where there is a default judgment and the promissory note or mortgage contains a provision for an award of attorney fees,

Section 702.065(2), Fla. Stat. (2010) provides that "it is not necessary for the court to hold a hearing or adjudge the requested attorney's fees to be reasonable if the fees do not exceed 3 per cent of the principal amount owed at the time of the filing of the complaint." *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985). *Id.* This statutory provision confirms that "such fees constitute liquidated damages in any proceeding to enforce the note or mortgage." *Id.*

(2) The judgment must contain findings as to the number of hours and the reasonable hourly rate. *Id.* at 1152. The requirements of *Rowe* are mandatory and failure to make the requisite findings is reversible error. *Home Insurance Co. v. Gonzalez*, 648 So. 2d 291, 292 (Fla. 3d DCA 1995). "An award of attorneys' fees must be supported by competent substantial evidence in the record and contain express findings regarding the number of hours reasonably expended and a reasonable hourly rate for the type of litigation involved." *Stack v. Homeside Lending, Inc.* 976 So. 2d 618, 620 (Fla. 2d DCA 2008).

### **Affirmative Defenses**

1. Genuine existence of material fact - precludes entry of summary judgment. *Manassas Investments Inc. v. O'Hanrahan*, 817 So. 2d 1080 (Fla. 2d DCA 2002).
2. Legal sufficiency of defenses - Certainty is required when pleading affirmative defenses; conclusions of law unsupported by allegations of ultimate fact are legally insufficient. *Bliss v. Carmona*, 418 So. 2d 1017, 1019 (Fla. 3d DCA 1982) "Affirmative defenses do not simply deny the facts of the opposing party's claim; they raise some new matter which defeats an otherwise apparently valid claim." *Wiggins v. Protmay*, 430 So. 2d 541, 542 (Fla. 1st DCA 1983). Plaintiff must either factually refute affirmative defenses or establish that they are legally insufficient. *Frost v. Regions Bank*, 15 So. 3d 905, 906 (Fla. 4th DCA 2009).

### 3. **Affirmative defenses commonly raised:**

(a) Payment – Where defendants alleged advance payments and plaintiff failed to refute this defense, plaintiff not entitled to summary judgment. *Morrone v. Household Fin. Corp. III*, 903 So. 2d 311, 312 (Fla. 2d DCA 2005). Equally, if the affidavit of indebtedness is inconclusive ( for example, includes a credit for unapplied funds without explanation), and the borrower alleges a the defense of inaccurate accounting, then summary judgment should be denied. *Kanu v. Pointe Bank*, 861 So. 2d 498 (Fla. 4th DCA 2003). However, summary judgment will be defeated if payment was attempted, but due to misunderstanding or excusable neglect coupled with lender’s conduct, contributed to the failure to pay. *Campbell v. Werner*, 232 So. 2d 252, 256 (Fla. 3d DCA 1970); *Lieberbaum v. Surfcomber Hotel Corp.*, 122 So. 2d 28, 29 (Fla. 3d DCA 1960), (Court dismissed foreclosure complaint where plaintiffs knew that some excusable oversight was the cause for non-payment, said payment having been refused and subsequently deposited by defendants into the court registry).

(b) Failure to comply with conditions precedent – such as Plaintiff’s failure to send the Notice of Default letter. Failure to receive payoff information does not preclude summary judgment. *Walker v. Midland Mortgage Co.*, 935 So. 2d 519, 520 (Fla. 3d DCA 2006).

(c) Estoppel is usually based on: a representation as to a material fact that is contrary to a later-asserted position; reliance on that representation; and a change in position detrimental to the party claiming estoppel, caused by the representation and reliance thereon. *Harris v. Nat’l. Recovery Agency*, 819 So. 2d 850, 854 (Fla. 4th DCA 2002); *Jones v. City of Winter Haven*, 870 So. 2d 52, 55 (Fla. 2d DCA 2003), (defendant defeated city’s foreclosure based on evidence presented which indicated that the city had agreed to stop fines for noncompliance with property code if homeowner hired a licensed contractor to make repairs).

(d) Waiver – the knowing and intentional relinquishment of an existing right. *Taylor v. Kenco Chem. & Mfg. Co.*, 465 So. 2d 581, 588 (Fla. 1st DCA 1985). When properly pled, affirmative defenses that sound in waiver (and estoppel) present

genuine issues of material fact which are inappropriate for summary judgment. *Schiebe v. Bank of Am.*, 822 So. 2d 575 (Fla. 5th DCA 2002).

(1) Acceptance of late payments - common defense asserting waiver is the lenders acceptance of late payments. However, the lender has the right to elect to accelerate or not to accelerate after default. *Scarfo v. Peever*, 405 So. 2d 1064, 1065 (Fla. 5th DCA 1981). Default predicated on defendant's failure to pay real estate taxes, could not be overcome by defendant's claim of estoppel due to misapplication of non-escrow payments. *Lunn Woods v. Lowery*, 577 So. 2d 705, 707 (Fla. 2d DCA 1991).

(e) Fraud in the inducement - defined as situation where parties to a contract appear to negotiate freely, but where in fact the ability of one party to negotiate fair terms and make an informed decision is undermined by the other party's fraudulent behavior. *HTP, Ltd. v. Lineas Aereas Costarricenses, S. A.*, 685 So. 2d 1238, 1239 (Fla. 1996).

Affirmative defense of fraud in the inducement based on allegation that seller failed to disclose extensive termite damage resulted in reversal of foreclosure judgment. *Hinton v. Brooks*, 820 So. 2d 325 (Fla. 5th DCA 2001). (Note that purchasers had first filed fraud in the inducement case and seller retaliated with foreclosure suit). Further, the appellate court opined in the *Hinton* case that fraud in the inducement was not barred by the economic loss rule. *Id.*

(f) Usury – defined by § 687.03, Fla. Stat. (2010), as a contract for the payment of interest upon any loan, advance of money, line of credit, or forbearance to enforce the collection of any debt, or upon any obligation whatever, at a higher rate of interest than the equivalent of 18 percent per annum simple interest. If the loan exceeds \$500,000 in amount or value, then the applicable statutory section is § 687.071, Fla. Stat. (2010). A usurious contract is unenforceable according to the provisions of Section 687.071(7), Fla. Stat. (2010).

(g) Forbearance agreement - Appellate court upheld summary judgment based on Defendant's failure to present any evidence as to the alleged forbearance

agreement of prior servicer to delay foreclosure until the settlement of his personal injury case. *Walker v. Midland Mortgage Co.*, 935 So. 2d at 520. If evidence of forbearance is submitted, it may defeat summary judgment.

(h) Statute of limitations - Property owner successfully asserted that foreclosure filed five years after mortgage maturity date was barred by statute of limitations; mortgage lien was no longer valid and enforceable under Section 95.281(1)(a), Fla. Stat. (2010); *American Bankers Life Assurance Co. of Fla. v. 2275 West Corp.*, 905 So. 2d 189, 191 (Fla. 3d DCA 2005).

(i) Failure to pay documentary stamps – Section 201.08, Fla. Stat. (2010) precludes enforcement of notes and mortgages absent the payment of documentary stamps. *WRJ Dev., Inc. v. North Ring Limited*, 979 So. 2d 1046, 1047 (Fla. 3d DCA 2008); *Bonifiglio v. Banker's Trust Co. of Calif.*, 944 So. 2d 1087, 1088 (Fla. 4th DCA 2007).

(1) This is a limitation on judicial authority; not a genuine affirmative defense.

(j) Truth in Lending (TILA) violations – Technical violations of TILA do not impose liability on lender or defeat foreclosure. *Kasket v. Chase Manhattan Mortgage Corp.*, 759 So. 2d 726 (Fla. 4th DCA 2000); 15 U. S. C. A. § 1600. Exception to TILA one year statute of limitations applies to defenses raised in foreclosure. *Dailey v. Leshin*, 792 So. 2d 527, 532 (Fla. 4th DCA 2001); 15 U. S. C. A. § 1640(e).

TILA issues include:

(1) Improper adjustments to interest rates (ARMS);

(2) Borrower must be given 2 copies of notice of rescission rights. Written acknowledgement of receipt is only a rebuttable presumption. *Cintron v. Bankers Trust Co.*, 682 So. 2d 616 (Fla. 2d DCA 1996).

(3) TILA rescission for up to 3 years after the transaction for failure to make material disclosures to borrower. Such as, APR of loan, amount financed, total payment and payment schedule. Rescission relieves borrower only for payment of interest. Must be within three years of closing. 15 U. S. C. § 1601-166 (1994); *Beach v. Great Western Bank*, 692 So. 2d 146, 153 (Fla. 1997).

(a) Wife's homestead interest in mortgaged property gives her right to

TILA disclosure. *Gancedo v. DelCarpio*, 17 So. 3d 843, 844 (Fla. 4th DCA 2009).

(k) Res judicata – Foreclosure and acceleration based on the same default bars a subsequent action unless predicated upon separate, different defaults. *Singleton v. Greymar Assoc.*, 882 So. 2d 1004, 1007 (Fla. 2004).

Additional cases: *Limehouse v. Smith*, 797 So. 2d 15 (Fla. 4th DCA 2001), (mistake); *O'Brien v. Fed. Trust Bank, F. S. B.*, 727 So. 2d 296 (Fla. 5th DCA 1999), (fraud, RICO and duress); *Biondo v. Powers*, 743 So. 2d 161 (Fla. 4th DCA 1999), (usury); *Heimmermann v. First Union Mortgage Corp.*, 305 F. 2d 1257 (11th Circ. 2002), (Real Estate Settlement Procedures Act (RESPA) violations).

### **Summary Judgment Hearing**

1. Plaintiff must file the original note and mortgage at or before the summary judgment hearing. Since the promissory note is negotiable, it must be surrendered in the foreclosure proceeding so that it does not remain in the stream of commerce. *Perry v. Fairbanks Capital Corp.*, 888 So. 2d 725, 726 (Fla. 5th DCA 2001). Copies are sufficient with the exception that the note must be reestablished. *Id.* Best practice is for judge to cancel the signed note upon entry of summary judgment.

(a) Failure to produce note - can preclude entry of summary judgment. *Nat'l. Loan Investors, L. P. v. Joymar Assoc.*, 767 So. 2d 549, 550 (Fla. 3d DCA 2000).

### **Final Judgment**

1. Section 45.031, Fla. Stat. (2010) governs the contents of the final judgment. Final Judgment Form 1.996, Fla. R. Civ. P. (2010).

2. Amounts due - Plaintiff's recovery limited to items pled in complaint or affidavit or based on a mortgage provision.

3. Court may award costs agreed at inception of contractual relationship; costs must be reasonable. *Nemours Found. v. Gauldin*, 601 So. 2d 574, 576 (Fla. 5th DCA 1992), (assessed costs consistent with mortgage provision rather than prevailing party statute); *Maw v. Abinales*, 463 So. 2d 1245, 1247 (Fla. 2d DCA 1985), (award of costs governed by mortgage provision).

#### 4. Checklist for Final Summary Judgment

(a) Final Judgment:

(1) Check service, defaults, dropped parties.

(2) Check for evidence of ownership of note.

(3) Check affidavits – signed and correct case number/parties.

(4) Amounts due and costs should match affidavits filed. If interest has increased due to resets a daily interest rate should be indicated so you can verify it.

(5) Check principal, rate & calculation of interest through date of judgment.

(6) Late fees – pre-acceleration is recoverable; post acceleration is not. *Fowler v. First Fed. Sav. & Loan Assoc. of Defuniak Springs*, 643 So. 2d 30, 33 (Fla. 1st DCA 1994).

(7) All expenses and costs, such as service of process should be reasonable, market rates. Items related to protection of security interest, such as fencing and boarding up property are recoverable if reasonable.

(8) Beware - hidden charges & fees for default letters, correspondence related to workout efforts. Court's discretion to deny recovery.

(9) Attorney fees must not exceed contract rate with client and be supported by an affidavit as to reasonableness. Attorney fee cannot exceed 3% of principal owed. § 702.065(2), Fla. Stat. (2010). Beware – add-ons for litigation fees – make sure that they are not double-billing flat fee.

(10) Bankruptcy fees not recoverable - Correct forum is bankruptcy court. *Martinez v. Giacobbe*, 951 So. 2d 902, 904 (Fla. 3d DCA 2007); *Dvorak v. First Family Bank*, 639 So. 2d 1076, 1077 (Fla. 5th DCA 1994). Bankruptcy costs incurred to obtain stay relief - recoverable. *Nemours*, 601 So. 2d at 575.

(11) Sale date – may not be set in less than 20 days or more than 35 days, unless parties agree. § 45.031(1)(a), Fla. Stat. (2010), *JRBL Dev., Inc. v. Maiello*, 872 So. 2d 362, 363 (Fla. 2d DCA 2004).

5. If summary judgment denied, foreclosure action proceeds to trial on contested issues.

(a) Trial is before the court without a jury. § 702.01, Fla. Stat. (2010).

6. Motion for rehearing – abuse of discretion to deny rehearing where multiple legal issues, including prepayment penalties and usury, remain unresolved by the trial court. *Bonilla v. Yale Mortgage Corporation*, 15 So. 3d 943, 945 (Fla. 3d DCA 2009).

7. After entry of final judgment and expiration of time to file a motion for rehearing or for a new trial, the trial court loses jurisdiction of the case. *Ross v. Damas*, 2010 WL 532812 (Fla. 3d DCA Feb. 17, 2010); 459 So. 2d 435 (Fla. 3d DCA 1984). Exception: when the trial court reserves in the final judgment the jurisdiction of post judgment matters, such as deficiency judgments. *Id.*

### **Right of Redemption**

1. Mortgagor may exercise his right of redemption at any time prior to the issuance of the certificate of sale. § 45.0315, Fla. Stat. (2010).

(a) Court approval is not needed to redeem. *Indian River Farms v. YBF Partners*, 777 So. 2d 1096, 1100 (Fla. 4th DCA 2001); *Saidi v. Wasko*, 687 So. 2d 10, 13 (Fla. 5th DCA 1996).

(b) Court of equity may extend time to redeem. *Perez v. Kossow*, 602 So. 2d 1372 (Fla. 3d DCA 1992).

2. To redeem, mortgagor must pay the entire mortgage debt, including costs of foreclosure and attorney fees. *CSB Realty, Inc. v. Eurobuilding Corp.*, 625 So. 2d 1275, 1276 (Fla. 3d DCA 1993); §45.0315, Fla. Stat. (2008).

3. Right to redeem is incident to every mortgage and can be assigned by anyone claiming under him. *VOSR Indus., Inc. v. Martin Properties, Inc.*, 919 So. 2d 554, 556 (Fla. 4th DCA 2006). There is no statutory prohibition against the assignment, including the assignment of bid at sale.



(a) Right of redemption extends to holders of subordinate interests. Junior mortgage has an absolute right to redeem from senior mortgage. *Marina Funding Group, Inc. v. Peninsula Prop. Holdings, Inc.*, 950 So. 2d 428, 429 (Fla. 4th DCA 2007); *Quinn Plumbing Co. v. New Miami Shores Corp.*, 129 So. 690, 694 (Fla. 1930).

4. Fed. right of redemption – United States has 120 days following the foreclosure sale to redeem the property if its interest is based on an IRS tax lien. For any other interest, the Fed. government has one year to redeem the property. 11 U. S. C. § 541, 28 U. S. C. § 959.

## **Judicial Sale**

### **Scheduling the judicial sale**

1. The statutory proscribed time frame for scheduling a sale is “not less than 20 days or more than 35 days after the date” of the order or judgment. § 45.031(1) (a), Fla. Stat. (2010). The statute applies unless agreed otherwise.

2. Cancellations, continuances and postponements are within the discretion of the trial court. Movant must have reasons. Judicial action based on benevolence or compassion constitutes an abuse of discretion. *Republic Federal Bank v. Doyle*, 2009 WL 3102130 (Fla. 3d DCA 2009), (Appellate court reversed trial court’s continuance of sale based on compassion to homeowners claiming they needed additional time to sell the home). There should be no across the board policy. But see, *Wells Fargo v. Lupica*, 2010 WL 2218584 (Fla. 5th DCA 6/4/10) – denial of lender’s unopposed motion to cancel and subsequent motion to vacate sale reversed. Counsel alleged a loan modification agreement had been reached. Court rejected asking for evidence of agreement. The Fifth District Court ruled, “there was no basis for the trial court to reject Wells Fargo’s counsels representation, as an officer of the court, that an agreement had been reached.” *Id.* Look at language in motions, “HAMP Review” and “loss mitigation” do not constitute an agreement. Include language in the order indicating the court’s rationale, even if you have a form order. Ask counsel to make a personal representation as an “officer of the court.” See also, *Chemical Mortgage v. Dickson*, 651 So. 2d 1275, 1276 (Fla. 4th DCA 1995). Error not to cancel sale and

reschedule where plaintiff did not receive bidding instructions on a federally-guaranteed mortgage. However, this case found “no extraordinary circumstances” preventing rescheduling. Suggestion: we live in extraordinary times.

### **Notice of sale**

1. Notice of sale must be published once a week, for 2 consecutive weeks in a publication of general circulation. § 45.031(1), Fla. Stat. (2010). The second publication shall be at least five days before the sale. § 45.031(2), Fla. Stat. (2010).

(a) Notice must include: property description; time and place of sale; case style; clerk’s name and a statement that sale will be conducted in accordance with final judgment.

(b) Defective notice can constitute grounds to set aside sale. *Richardson v. Chase Manhattan Bank*, 941 So. 2d 435, 438 (Fla. 3d DCA 2006); *Ingorvaia v. Horton*, 816 So. 2d 1256 (Fla. 2d DCA 2002).

### **Judicial sale procedure**

1. Judicial sale is public, anyone can bid. *Heilman v. Suburban Coastal Corp.*, 506 So. 2d 1088 (Fla. 4th DCA 1987). Property is sold to the highest bidder.

2. Plaintiff is entitled to a credit bid in the amount due under final judgment, plus interest and costs through the date of sale. *Robinson v. Phillips*, 171 So. 2d 197, 198 (Fla. 3d DCA 1965).

3. Amount bid is conclusively presumed sufficient consideration. § 45.031(8), Fla. Stat. (2010).

### **Certificate of sale**

1. Upon sale completion - certificate of sale must be served on all parties not defaulted. The right of redemption for all parties is extinguished upon issuance of certificate of sale. §45.0315, Fla. Stat. (2008).

2. Documentary stamps must be paid on the sale. §201.02(9), Fla. Stat. (2010). The amount of tax is based on the highest and best bid at the foreclosure sale. *Id.*

(a) Assignment of successful bid at foreclosure sale - is a transfer of an interest in realty subject to the documentary stamp tax. Fla. Admin. Code Rule 12B-4.013(25). (Rule 12B-4.013(3) provides that the tax is also applicable to the certificate of title

issued by the clerk of court to the holder of the successful foreclosure bid, resulting in a double stamp tax if the bid is assigned and the assignee receives the certificate of title.)

(b) Assignment prior to foreclosure sale - holder of a mortgage foreclosure judgment that needs to transfer title to a different entity and anticipates that the new entity would be the highest bidder, should assign prior to the foreclosure sale to avoid double tax.

(c) Documentary stamps are due only if consideration or an exchange of value takes place. *Crescent Miami Center, LLC v. Fla. Dept. of Revenue*, 903 So. 2d 913, 918 (Fla. 2005), (Transfer of unencumbered realty between a grantor and wholly-owned grantee, absent consideration and a purchaser, not subject to documentary stamp tax); *Dept. of Revenue v. Mesmer*, 345 So. 2d 384, 386 (Fla. 1st DCA 1977), (based on assignment of interest and tender of payment, documentary stamps should have been paid).

(d) Exempt governmental agencies, which do not pay documentary stamps include: Fannie Mae, Freddie Mac, Fed. Home Administration and the Veteran's Administration. Fla. Admin. Code Rules 12B-4.014(9)-(11); 1961 Op. Atty. Gen. 061-137, Sept. 1, 1961.

### **Objection to sale**

1. Any party may file a verified objection to the amount of bid within 10 days. § 45.031(8), Fla. Stat. (2010). The court may hold a hearing – within judicial discretion. Hearing must be noticed to everyone, including third party purchasers. *Shlishey the Best v. Citifinancial Equity Services, Inc.*, 14 So. 3d 1271 (Fla. 2d DCA 2009).
2. Court has broad discretion to set aside sale. *Long Beach Mortgage Corp. v. Bebble*, 985 So. 2d 611, 614 (Fla. 4th DCA 2008), (appellate court reversed sale - unilateral mistake resulted in outrageous windfall to buyer who made *de minimis* bid). The court may consider a settlement agreement in considering whether to vacate a sale. *JRBL Development, Inc. v. Maiello*, 872 So. 2d 362, 363 (Fla. 2d DCA 2004).

3. **Test:** sale may be set aside if:

(1) bid was grossly or startlingly inadequate; and (2) inadequacy of bid resulted from some mistake, fraud, or other irregularity of sale. *Blue Star Invs., Inc. v. Johnson*, 801 So. 2d 218 (Fla. 4th DCA 2001); *Mody v. Calif. Fed. Bank*, 747 So. 2d 1016, 1017 (Fla. 3d DCA 1999). Mere inadequacy of price is not enough. *Arlt v. Buchanan*, 190 So. 2d 575, 577 (Fla. 1960). Burden on party seeking to vacate sale.

(a) Plaintiff's delay in providing payoff information cannot be sole basis for setting aside sale. *Action Realty & Invs., Inc. v. Grandison*, 930 So. 2d 674, 676 (Fla. 4th DCA 2006).

(b) Stranger to foreclosure action does not have standing to complain of defects in the absence of fraud. *REO Properties Corp. v. Binder*, 946 So. 2d 572, 574 (Fla. 2d DCA 2006).

(c) Sale may be set aside if plaintiff misses sale, based on appropriate showing. *Wells Fargo Fin. System Fla., Inc. v. GRP Fin. Services Corp.*, 890 So. 2d 383 (Fla. 2d DCA 2004).

(d) Court may refuse to set aside sale where objection is beyond statutory period. *Ryan v. Countrywide Home Loans, Inc.*, 7453 So. 2d 36, 38 (Fla. 2d DCA 1999), (untimely motion filed 60 days following the sale).

### **Sale vacated**

1. If sale vacated – mortgage and lien “relieved with all effects” from foreclosure and returned to their original status. §702.08, Fla. Stat. (2010).

(a) Upon readvertisement and resale, a mortgagor's lost redemptive rights temporarily re-vest. *YEMC Const. & Development, Inc. v. Inter Ser, U. S. A., Inc.*, 884 So. 2d 446, 448 (Fla. 3d DCA 2004).

## **Post Sale Issues**

### **Certificate of title**

1. No objections to sale – Sale is confirmed by the Clerk's issuance of the certificate of title to purchaser. Title passes to the purchaser subject to parties whose interests were not extinguished by foreclosure, such as omitted parties.

(a) Plaintiff may reforeclose or sue to compel an omitted junior lienholder to redeem within a reasonable time. *Quinn*, 129 So. 2d at 694.

(b) Foreclosure is void if titleholder omitted. *England v. Bankers Trust Co. of Calif., N. A.*, 895 So. 2d 1120, 1121 (Fla. 4th DCA 2005).

### **Right of possession**

1. Purchaser has a right to possess the property - upon the issuance of the certificate of title, provided the interest holder was properly joined in the foreclosure.

2. Right of possession enforced through writ of possession. Rule 1.580, Fla. R. Civ. P. (2010)

3. **Summary writ of possession procedure:**

(a) Purchaser of property moves for writ of possession;

(b) The writ can be issued against any party who had actual or constructive knowledge of the foreclosure proceedings and adjudication; *Redding v. Stockton, Whatley, Davin & Co.*, 488 So. 2d 548, 549 (Fla. 5th DCA 1986);

(c) Best practice is to require notice and a hearing before issuance of a writ.

(1) Protecting Tenants at Foreclosure Act of 2009 provides for a 90 day pre-eviction notice applicable to bona fide tenants. (See following section)

(d) At hearing, judge orders immediate issuance of writ of possession unless a person in possession raises defenses which warrant the issuance of a writ of possession for a date certain;

(e) The order for writ of possession is executed by the sheriff and personal property removed to the property line.

### **Protecting Tenants at Foreclosure Act of 2009**

1. Federal legislation, known as Senate Bill 896, P. L. 111-22, provides for a nationwide 90 day pre-eviction notice requirement for bona fide tenants in foreclosed properties. The provisions of the original bill were extended under HR 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act, which became law on 7/21/10.

2. The application of the new law is restricted to any dwelling or residential property that is being foreclosed under a federally-related mortgage loan as defined by Section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U. S. C. 2602). In short, the originating lender must be the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation or a financial institution insured by the Federal Government.
2. Three prerequisites must be satisfied to qualify as a bona fide tenant under the new Act:
  - (1) The tenant cannot be the mortgagor or a member of his immediate family;
  - (2) The tenancy must be an arms length transaction; and
  - (3) The lease or tenancy requires the receipt of rent that is not substantially lower than the fair market rent for the property.
4. The buyer or successor in interest after foreclosure sale must provide bona fide tenants:
  - (a) With leases – the right to occupy the property until the expiration of the lease term. The exception is if the buyer intends to occupy the property as a primary residence, in which case he must give 90 days notice.
  - (b) Without leases – the new buyer must give the tenant 90 days notice prior to lease termination.
5. The single other exception to the foregoing is Section 8 Housing. In this case, the buyer assumes the interest of the prior owner and the lease contract. The buyer cannot terminate in the absence of “good cause.”
6. This provisions of the new law went into effect on May 20, 2009. The bill sunsets on 12/31/2014.

## **Disbursement of Sale Proceeds**

### **Surplus**

1. Surplus - the remaining funds after payment of all disbursements required by the final judgment of foreclosure and shown on the certificate of disbursements. § 45.032(1)(c), Fla. Stat. (2010). Disbursement of surplus funds is governed by Section 45.031, Fla. Stat. (2010).

2. Entitlement to surplus is determined by priority; in order of time in which they became liens. *Household Fin. Services, Inc. v. Bank of Am., N. A.*, 883 So. 2d 346, 347 (Fla. 4th DCA 2004). It is the duty of the court to prioritize the interests of the competing junior lien holders and the amounts due each. *Citibank v. PNC Mortgage Corp. of America*, 718 So. 2d 300, 301 (Fla. 2d DCA 1998).

(a) Default does not waive lienholder's rights to surplus funds. *Golindano v. Wells Fargo Bank*, 913 So. 2d 614 (Fla. 3d DCA 2005). A junior lienholder has priority over the property holder for surplus funds. *Id.*, 615.

(b) A senior lienholder is not entitled to share in surplus funds. *Garcia v. Stewart*, 906 So. 2d 1117, 1121 (Fla. 4th DCA 2005), (senior lienholder liens unaffected; improper party to junior lienholder foreclosure).

(c) Entitlement to balance of surplus after payment of priority interests - payable to the record owner as of the date of the filing of the lis pendens. *Suarez v. Edgehill*, 2009 WL 3271350 (Fla. App. 3d DCA Oct. 14, 2009).

### **Deficiency Judgment**

1. Deficiency – is the difference between the fair market value of the security received and the amount of the debt. *Mandell v. Fortenberry*, 290 So. 2d 3, 6 (Fla. 1974); *Grace v. Hendricks*, 140 So. 790 (Fla. 1932).

2. A deficiency can be obtained only if a request for that relief is made in the pleadings and if personal jurisdiction has been obtained over the defendant or defendants against whom the deficiency is sought. *Bank of Florida in South Florida v. Keenan*, 519 So. 2d 51, 52 (Fla. 3d DCA 1988). The granting of a deficiency judgment is the rule rather than the exception. *Thomas v. Premier Capital, Inc.*, 906 So. 2d 1139, 1140 (Fla. 3d DCA 2005).

(a) Deficiency judgment not allowable if based on constructive service of process.

(b) New service of process on defendant was not required for deficiency judgment where personal jurisdiction had been originally conferred by service of foreclosure complaint. *L. A. D. Property Ventures, Inc. v. First Bank*, 2009 WL 3270846 (Fla. App. 2d DCA Oct. 14, 2009). "The law contemplates a continuance of the proceedings for entry of a deficiency judgment as a means of avoiding the expense and inconvenience of an additional suit at law to obtain the balance of the obligation owed by a debtor." *Id.*

3. Trial court has discretion to enter deficiency decree. § 702.06, Fla. Stat. (2008); *Thomas*, 906 So. 2d at 1140. The court needs to hold an evidentiary hearing. *Merrill v. Nuzum*, 471 So. 2d 128, 129 (Fla. 3d DCA 1985). The court can enter a default judgment provided the defendant was properly noticed. *Semlar v. Savings of Florida*, 541 So 2d 1369, 1370 (Fla. 4th DCA 1989).

(a) The exercise of discretion in denial of a deficiency decree must be supported by disclosed equitable considerations which constitute sound and sufficient reasons for such action. *Larsen v. Allocca*, 187 So. 2d 903, 904 (Fla. 3d DCA 1966).

4. A cause of action for deficiency cannot accrue until after entry of final judgment and a sale of the assets to be applied to the satisfaction of the judgment. *Chrestensen v. Eurogest, Inc.*, 906 So. 2d 343, 345 (Fla. 4th DCA 2005). The amount of deficiency is determined at the time of the foreclosure sale. *Estepa v. Jordan*, 678 So. 2d 878 (Fla. 5th DCA 1996). The amount bid at foreclosure sale is not conclusive evidence of the property's market value. *Century Group, Inc. v. Premier Financial Services*, 724 So. 2d 661, (Fla. 2d DCA 1999).

(a) The appraisal determining the fair market value must be properly admitted into evidence and be based on the sale date. *Flagship State Bank of Jacksonville v. Drew Equipment Company*, 392 So. 2d 609, 610 (Fla. 5th DCA 1981).

(b) The formula to calculate a deficiency judgment is the final judgment of foreclosure total debt minus the fair market value of the property. *Morgan v. Kelly*, 642 So. 2d 1117 (Fla. 3d DCA 1994).



(c) The amount paid by a mortgage assignee for a debt is "legally irrelevant" to the issue of whether the assignee is entitled to a deficiency award after a foreclosure sale. *Thomas*, 906 So. 2d at 1141.

4. Burden: The secured party has the burden to prove that the fair market value of the collateral is less than the amount of the debt. *Chidnese v. McCollem*, 695 So. 2d 936, 938 (Fla. 4th DCA 1997), *Estepa* 678 So. 2d at 878. However, the Third District Court has held that the burden is on the mortgagor resisting a deficiency judgment to demonstrate that the mortgagee obtained property in foreclosure worth more than the bid price at the foreclosure sale. *Addison Mortgage Co. v. Weit*, 613 So.2d 104 (Fla. 3d DCA 1993). See also, *Thunderbird, Ltd. v. Great American Ins. Co.*, 566 So. 2d 1296, 1299 (Fla. 1st DCA 1990), (court held that introduction of the certificate of sale from the foreclosure sale showing that the bid amount at the foreclosure sale was less than the amount of the debt shifted the burden to the mortgagee to go forward with other evidence concerning the fair market value of the property.)

5. Denial of deficiency decree in foreclosure suit for jurisdictional reasons, as distinguished from equitable grounds, is not res judicata so as to bar an action for deficiency. *Frumkes v. Mortgage Guarantee Corp.*, 173 So. 2d 738, 740 (Fla. 3d DCA 1965); *Klondike, Inc. v. Blair*, 211 So. 2d 41, 42 (Fla. 4th DCA 1968).

6. Reservation of jurisdiction in the final judgment of foreclosure – If jurisdiction is reserved, new or additional service of process on defendant is not required. *Estepa*, 678 So. 2d at 878. The motion and the notice of hearing must be sent to the attorney of record for the mortgagor. *Id.*, *NCNB Nat'l. Bank of Fla. v. Pyramid Corp.*, 497 So. 2d 1353, 1355 (Fla. 4th DCA 1986), (defaulted defendant entitled to notice of deficiency hearing). However, the motion for deficiency must be timely filed. If untimely, the deficiency claim could be barred upon appropriate motion by the defendant under Rule 1.420(e), Fla. R. Civ. P. (2010), *Frohman v. Bar-Or*, 660 So. 2d 633, 636 (Fla. 1995); *Steketee v. Ballance Homes, Inc.*, 376 So. 2d 873, 875 (Fla. 2d DCA 1979).

(a) No reservation of jurisdiction in the final judgment - motion for deficiency must be made within ten (10) days of issuance of title. *Frumkes*, 173 at 740.

(b) The lender can file a separate action for post-foreclosure deficiency. Section 702.06, Fla. Stat (2010). In a separate action, the defendant has the right to demand a trial by jury. *Hobbs v. Florida First Nat.'l Bank of Jacksonville*, 480 So. 2d 153, 156 (Fla. 1st DCA 1985); *Bradberry v. Atlantic Bank of St. Augustine*, 336 So. 2d 1248, 1250 (Fla. 1st DCA 1976), (no jury trial right within foreclosure action). Section 55.01(2), Fla. Stat. (2010) mandates that final judgments in a separate action for deficiency contain the address and social security number of the judgment debtor, if known. This requirement is not imposed in a mortgage foreclosure action, in which an *in rem* judgment is sought.

7. Statute of limitations –

(a) A deficiency judgment or decree is barred when an action on the debt secured by the mortgage is barred. *Barnes v. Escambia County Employees Credit Union*, 488 So. 2d 879, 880 (Fla. 1st DCA 1986), abrogated on other grounds.

(b) Section 95.11, Fla. Stat. (2010) imposes a five-year statute of limitations for a foreclosure deficiency judgment.

(c) "A cause of action for deficiency does not accrue, and thus the statute of limitations does not begin to run, until the final judgment of foreclosure and subsequent foreclosure sale." *Chrestensen*, 906 So. 2d at 345.

8. There are statutory limitations imposed on a deficiency judgment when a purchase money mortgage is being foreclosed. Section 702.06, Fla. Stat. (2010) includes language that impairs the entitlement to a deficiency judgment with respect to a purchase money mortgage, when the mortgagee becomes the purchaser at foreclosure sale. Specifically, this statutory limitation provides: "the complainant shall also have the right to sue at common law to recover such deficiency, provided no suit at law to recover such deficiency shall be maintained against the original mortgagor in cases where the mortgage is for the purchase price of the property involved and where the original mortgagee becomes the purchaser thereof at foreclosure sale and also is granted a deficiency decree against the original mortgagor." Essentially, if the

lender purchases the subject property he has not incurred the damages and in fact may recoup or profit at a later sale. See also, *United Postal Savings Ass'n v. Nagelbush*, 553 So. 2d 189(Fla. 3d DCA 1989), *Taylor v. Prine*, 132 So. 2d 464, 465 (Fla. 1931).

(a) One Florida court ruled in a case where the purchase money mortgagee was also the purchaser that the "all important distinction" in the case was that "the purchaser at the foreclosure sale was not the mortgagee but ... an utter stranger to the parties," a third party purchaser, warranting reversal of the trial court's denial of deficiency judgment. *Lloyd v. Cannon*, 399 So. 2d 1095, 1096 (Fla. 1st DCA 1981).

### **Bankruptcy**

1. The automatic stay provisions of 11 U. S. C. §362 enjoins proceedings against the debtor and against property of the bankruptcy estate.

(a) To apply, the subject real property must be listed in the bankruptcy schedules as part of the estate. 11 U. S. C. § 541.

2. Foreclosure cannot proceed until the automatic stay is lifted or terminated. If property ceases to be property of the bankruptcy estate, the stay is terminated.

(a) The automatic stay in a second case filed within one year of dismissal of a prior Chapter 7, 11 or 13 automatically terminates 30 days after the second filing, unless good faith is demonstrated. 11 U. S. C. § 362(c)(3).

(b) The third filing within one year of dismissal of the second bankruptcy case, lacks entitlement to the automatic stay and any party in interest may request an order confirming the inapplicability of the automatic stay.

(c) Multiple bankruptcy filings where the bankruptcy court has determined that the debtor has attempted to delay, hinder or defraud a creditor may result in the imposition of an order for relief from stay in subsequent cases over a two year period. 11 U. S. C. §362(d)(4).

3. Debtor's discharge in bankruptcy only protects the subject property to the extent that it is part of the bankruptcy estate.

4. Foreclosure cannot proceed until relief from automatic stay is obtained or otherwise terminated, or upon dismissal of the bankruptcy case.

### **Florida's Expedited Foreclosure Statute**

1. Enacted by § 702.10, Fla. Stat. (2010).
2. Upon filing of verified complaint, plaintiff moves for immediate review of foreclosure by an order to show cause. (These complaints are easily distinguishable from the usual foreclosure by the order to show cause).

(a) The failure to file defenses or to appear at the show cause hearing "presumptively constitutes conduct that clearly shows that the defendant has relinquished the right to be heard." *Id.*

3. Not the standard practice among foreclosure practitioners, due to limitations:
  - (a) Statute does not foreclose junior liens;
  - (b) Procedures differ as to residential and commercial properties; and
  - (c) Statute only provides for entry of an *in rem* judgment; a judgment on the note or a deficiency judgment cannot be entered under the show cause procedure.

### **Common Procedural Errors**

1. Incorrect legal description contained in the:
  - (a) Original mortgage – requires a count for reformation. An error in the legal description of the deed requires the joinder of the original parties as necessary parties to the reformation proceedings. *Chanrai Inv., Inc., v. Clement*, 566 So. 2d 838, 840 (Fla. 5th DCA 1990).
  - (b) Complaint and lis pendens – requires amendment.
  - (c) Judgment – Rule 1.540 (a), Fla. R. Civ. P. (2010) governs. For example, an incorrect judgment amount which omitted the undisputed payment of real estate taxes could be amended. *LPP Mortgage Ltd. v. Bank of America*, 826 So. 2d 462, 463 (Fla. 3d DCA 2002).
  - (d) Notice of Sale – requires vacating the sale and subsequent resale of property. *Hyte Development Corp. v. General Electric Credit Corp.*, 356 So. 2d 1254 (Fla. 3d DCA 1978).

(e) Certificate of title – a “genuine” scrivener’s error in the certificate of title can be amended. However, there is no statutory basis for the court to direct the clerk to amend the certificate of title based on post judgment transfers of title, faulty assignments of bid or errors in vesting title instructions.

(1) An error in the certificate of title which originates in the mortgage and is repeated in the deed and notice of sale requires the cancellation of the certificate of title and setting aside of the final judgment. *Lucas v. Barnett Bank of Lee County*, 705 So. 2d 115 (Fla. 2d DCA 1998). (For example, plaintiff’s omission of a mobile home and its vehicle identification number (VIN) included in the mortgage legal description, but overlooked throughout the pleadings, judgment and notice of sale, cannot be amended in the certificate of title.) Due process issues concerning the mobile home require the vacating of the sale and judgment.

### **Mortgage Workout Options**

1. Reinstatement: Repayment of the total amount in default or payments behind and restoration to current status on the note and mortgage.
2. Forbearance: The temporary reduction or suspension of mortgage payments.
3. Repayment Plan: Agreement between the parties whereby the homeowner repays the regularly scheduled monthly payments, plus an additional amount over time to reduce arrears.
4. Loan Modification: Agreement between the parties whereby one or more of the mortgage terms are permanently changed.
5. Short Sale: Sale of real property for less than the total amount owed on the note and mortgage.

(a) If the lender agrees to the short sale, the remaining portion of the mortgage debt, (the difference between the sale price of the property and mortgage balance, the deficiency), may be forgiven by the lender.

(1) Formerly, the amount of debt forgiven was considered income imputed to the seller and taxable as a capital gain by the IRS.

*Parker Delaney*, 186 F. 2d 455, 459 (1st Cir. 1950). However,

federal legislation has temporarily suspended imputation of income upon the cancellation of debt.

6. Deed-in-lieu of Foreclosure: The homeowner's voluntary transfer of the home's title in exchange for the lender's agreement not to file a foreclosure action.

Revised 7/14/10

**From:** [Callanan, Richard <RCallanan@CA.CJIS20.ORG>](mailto:RCallanan@CA.CJIS20.ORG)

**To:** [Kiesel, Lisa](#)

[Harkey, Sandra D](#)

**CC:**

**Date:** 10/21/2009 3:22:18 PM

**Subject:** ?FW: Supplement to Supreme Court Opinion SC08-1141

---

-----  
From: Miriam Jugger[SMTP:JUGGERM@FLCOURTS.ORG]

Sent: Wednesday, October 21, 2009 4:21:56 PM

To: Trial Court Administrators; Trial Court Chief Judges

Cc: Blan Teagle; Greg Youchock; Kristine Slayden; P.J. Stockdale;  
Arlene Johnson

Subject: FW: Supplement to Supreme Court Opinion SC08-1141

Auto forwarded by a Rule

Dear Trial Court Administrators and Trial Court Chief Judges,

Please find attached a copy of an e-mail that was sent to all the Trial Court Clerks regarding Supreme Court Opinion SC08-1141. Please forward this information to your staff as needed. Please contact me if you have any comments or questions regarding this matter.

Thank you

Miriam Jugger

Supreme Court of Florida

Office of the State Courts Administrator

500 S. Duval Street

Tallahassee, FL 32399

(850) 410-1888

[juggerm@flcourts.org](mailto:juggerm@flcourts.org)

From: Miriam Jugger

Sent: Wednesday, October 21, 2009 4:14 PM

**20TH CIR 02813**

To: Trial Court Clerks

Cc: Blan Teagle; Greg Youchock; Kristine Slayden; Miriam Jugger; Bradley Rich; P.J. Stockdale; Arlene Johnson; Heather Thuotte-Pierson; Rosie Graham; Jim Brown; Vicki Charlton

Subject: Supplement to Supreme Court Opinion SC08-1141

Dear Clerks,

Please review the attached regarding the recent supplement to Supreme Court Opinion SC08-1141 from Mr. Greg Youchock, Chief of Court Services. Please forward this information to all staff involved in Civil and Family court.

Thanks you for your time and commitment to SRS standards

Miriam Jugger

Supreme Court of Florida

Office of the State Courts Administrator

Court Services Audit Team Leader

500 S. Duval Street

Tallahassee, Fl 32399

(850) 410-1888

[juggerm@flcourts.org](mailto:juggerm@flcourts.org)



**From:** Callanan, Richard </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=RCALLANAN>

**To:** Aloia, Nancy K

Wilsker, Scott

Middlebrook, Mark

Mann, Sheila

**CC:** Kiesel, Lisa

**Date:** 12/1/2009 8:55:08 AM

**Subject:** ?FW: 20th Circuit Case Management Workshop- Background Data

**Attachments:** Civil case mgmtPresentationFinal.ppt

---

See the recent attached email from Barry Mahoney. We sent him alot of information on Criminal DCM in all 3 counties and our initial plans for Civil DCM.

Please be thinking about & let me know what you think the 3 major things are that you want to accomplish from the workshops given where you are in the process with your judges.

I do want the criminal workshop to include a panel of 4 judges--1 from each county( so far Reese, Hardt, Labode and I think Grieder), to discuss three things: What our approach has been, Key things that have worked well (Stengths), Key areas that are problems( Weaknesses) and need work for the future( Opportunities). That panel will be facilitated by Mahoney and run for about 30 minutes( 5 minutes each judge with Q&A).

For civil, I will also want to plan a panel ( 20 minutes) with Judge Pivacek, Judge McHugh & Judge Kyle to talk about key issues in the civil process for complex civil cases that are problems and are related to delay. Most of the civil workshop will focus on fundamentals , a panel discussion and then group work on developing strategies and a plan.

Please check with those judges and let me know if they are willing to participate. Also, I think you should each(Civil) identify 1- Bar Rep and 1 Clerk rep to invite. Let me know how you want t handle that.

On civil, attached is a Powerpoint that we did for Lee civil judges. It might be helpful to you in working with your judges.

Thanks

---

From: Barry Mahoney [barrym@jmijustice.org]

Sent: Tuesday, December 01, 2009 12:20 AM

To: Callanan, Richard

Subject: RE: 20th Circuit Case Management Workshop- Background Data

Rick,

Thanks for sending the materials on both criminal and civil case processing in the two e-mails today. They are interesting and helpful. I haven't worked my way through all of them in detail, but having this information will be very useful in planning the workshops.

I would like to go over some of the material and my initial plans with you later this week (even before our Dec 15 phone call) if possible, because this is my best week for working on the materials. (My daughter and two grandkids ages 5 and 3 will be with us in Denver Dec 7-20, and I will be spending most of my time with them during that period.) I have a few threshold questions and initial thoughts as I get started working on the agenda:

1. What should I plan on as hours for the workshop? Begin both days at 8:30 AM, end at 4:30 or 5 PM on Thursday and

at 12:50 or 1:00 PM on Friday? Let me know your thoughts Page 2

2. Will lunch be available at Edison? How much time should we plan on for lunch?

3. I would plan on a 15-minute break in the morning and in the afternoon. Will there be coffee/tea/soft drinks available during breaks?

4. The impact on the jail population and the Lee court's pending felony caseload from the initial months of felony DCM is impressive. We should spend some time on this and figure out how best to convey the success.

5. Foreclosure cases are clearly going through the roof in the 20th Circuit. Has the Circuit (or any counties) developed any special procedures for dealing with these cases (e.g., presumptive mediation; requirement that the plaintiff prove possession of title at the outset)?

6. I am very conscious that we will be trying to cover a lot of ground in a very short period of time (one day for civil and a half day for criminal. We will need to balance attention to fundamentals and specific techniques of caseflow management with time for the Participants to work in groups on plan development (or, for Lee County participants, perhaps plan refinement/enhancement). Let's get clear on the top priority objectives for each session.

I am sure that I will have plenty of additional questions as I work my way through the materials that you have sent and develop a draft of an agenda and of the materials that I will plan to use. I will want to discuss, with you, which of the materials that you have sent should be incorporated into the presentations, taking account of the fact that the judges and others in the five counties are in different places in development of DCM.

I have made flight and hotel reservations. I am scheduled to arrive at RSW at 4:15 PM on Wednesday, January 13. I will be staying at the Crowne Plaza, as per suggestions made by you and Dawn. If we can get some time that Wednesday afternoon/evening, that would be good. I'm sure that we'll talk by phone in the meantime. If there is a good time to talk with you briefly by phone later this week, let me know.

Best regards,

Barry

---

From: Callanan, Richard [mailto:RCallanan@CA.CJIS20.ORG]

Sent: Monday, November 30, 2009 1:51 PM

To: Barry Mahoney

Subject: RE: 20th Circuit Case Management Workshop- Background Data

Hi Barry

First, let me apologize for the large number of files and data that I am sending. I have tried to pare it down, but I have chosen to err on the side of "too much is better than too little", so that you have as much background as possible.

On the civil side, I previously sent you a PP presentation that laid out the Lee civil trends. I also have overall filing data attached and civil pending case data for Collier. Lee and Collier have been the 2 counties to take the lead in civil.

I will send Criminal DCM data and materials in a separate email.

Best

Rick

---

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**20TH CIR 02816**

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**From:** [Callanan, Richard </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=RCALLANAN>](mailto:Callanan, Richard </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=RCALLANAN>)

**To:** [Harkey, Sandra D](mailto:Harkey, Sandra D)

**CC:**

**Date:** 12/1/2009 8:56:42 AM

**Subject:** ?FW: 20th Circuit Case Management Workshop- Background Data

**Attachments:** [Civil case mgmtPresentationFinal.ppt](#)

---

Please see attached and print out emails for me for file. I am finishing up some things here and will be in to meet with Dan Wiley at 10 am.

---

From: Callanan, Richard  
Sent: Tuesday, December 01, 2009 11:55 AM  
To: Aloia, Nancy K; Wilsker, Scott; Middlebrook, Mark; Mann, Sheila  
Cc: Kiesel, Lisa  
Subject: FW: 20th Circuit Case Management Workshop- Background Data

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From: Barry Mahoney [barrym@jmijustice.org]  
Sent: Tuesday, December 01, 2009 12:20 AM  
To: Callanan, Richard  
Subject: RE: 20th Circuit Case Management Workshop- Background Data

Rick,

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20TH CIR 02818

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Best regards,

Barry

---

From: Callanan, Richard [mailto:RCallanan@CA.CJIS20.ORG]

Sent: Monday, November 30, 2009 1:51 PM

To: Barry Mahoney

Subject: RE: 20th Circuit Case Management Workshop- Background Data

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I will send Criminal DCM data and materials in a separate email.

Best

**20TH CIR 02819**

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**From:** [Patricia A. Murphy <Patricia.Murphy@collierclerk.com>](mailto:Patricia.Murphy@collierclerk.com)

**To:** [Hendrickx, Jo-Ann](#)

**CC:**

**Date:** 2/3/2009 10:57:12 AM

**Subject:** Foreclosure Checklist

---

Hi Jo ann,

Please find attached the foreclosure Checklist.

Thank you

Patricia A. Murphy  
Civil Foreclosure Clerk  
Collier County Clerk of Courts  
[patricia.murphy@clerk.collier.fl.us](mailto:patricia.murphy@clerk.collier.fl.us)  
(239) 732-2657

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**From:** Friedman, David </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=DFRIEDMAN>

**To:** Hayes, Hugh

**CC:**

**Date:** 2/5/2010 2:13:16 PM

**Subject:** ?RE: New Language in Foreclosure Docs

---

Thanks Judge; I hope I don't miss any other unwarranted additions to the judgments. Here is a link to a Fortune magazine article which I found very interesting; I hope you do too.

[http://money.cnn.com/2009/12/08/real\\_estate/lewie\\_ranieri\\_mortgages.fortune/index.htm](http://money.cnn.com/2009/12/08/real_estate/lewie_ranieri_mortgages.fortune/index.htm)

---

From: Hayes, Hugh

Sent: Friday, February 05, 2010 1:54 PM

To: Friedman, David

Cc: Pivacek Foreclosures; County Judge-Collier

Subject: New Language in Foreclosure Docs

Dear David:

Thank you for catching and xxxing out the new and creative language that some of the attys have been adding to their foreclosure judgments about them getting superior equitable subrogation liens on the property that they have just foreclosed on..."BS" to put it civilly...they can plead and try that issue.

Also, I agree that there is no reason to return the original documents back to the bank that just foreclosed on the mortgage...they couldn't have gotten their judgment w/o the original or reestablishing a lost or destroyed note, and it seems silly to give them the originals back just so they can lose them again and let some other poor soul buy them at a "steal" and attempt another foreclosure or suit on the note against the original borrower...fraught w/ fraud possibilities.

Good eye...

Judge Hayes



**From:** [Callanan, Richard <RCallanan@CA.CJIS20.ORG>](mailto:RCallanan@CA.CJIS20.ORG)

**To:** [Kiesel, Lisa](#)

[Harkey, Sandra D](#)

**CC:**

**Date:** 2/8/2010 2:45:18 PM

**Subject:** ?FW: foreclosure mediation training

---

-----  
From: Lisa Goodner[SMTP:GOODNERL@FLCOURTS.ORG]

Sent: Monday, February 08, 2010 2:45:15 PM

To: Trial Court Chief Judges; Trial Court Administrators

Subject: FW: foreclosure mediation training

Auto forwarded by a Rule

I am providing the attached information as requested by Judge Haworth and discussed on our conference call earlier today.

Lisa

From: Janice Houchell [mailto:JHouchell@jud12.flcourts.org]

Sent: Monday, February 08, 2010 1:11 PM

To: Lisa Goodner

Subject: foreclosure mediation training

Judge Haworth asked that I give you the USF website regarding foreclosure mediation training and that you please distribute to all chief judges. <http://www.crc.usf.edu/> Thank you.

Janice L. Houchell

Judicial Assistant to the

Honorable Lee E. Haworth

941-861-7950

941-861-7914 fax

[jhouchell@jud12.flcourts.org](mailto:jhouchell@jud12.flcourts.org)

**20TH CIR 02823**



**From:** [Callanan, Richard <RCallanan@CA.CJIS20.ORG>](mailto:RCallanan@CA.CJIS20.ORG)

**To:** [Kiesel, Lisa](#)

[Harkey, Sandra D](#)

**CC:**

**Date:** 3/4/2009 12:38:36 PM

**Subject:** ?FW: College of Advanced Judicial Studies Course Catalog

---

-----  
From: Ann Luchini[SMTP:LUCHINIA@FLCOURTS.ORG]

Sent: Wednesday, March 04, 2009 12:38:02 PM

To: Trial Court Administrators; DCA Marshals

Subject: College of Advanced Judicial Studies Course Catalog

Auto forwarded by a Rule

FYI – The following email was sent this morning to all justices, appellate judges, circuit judges, county judges, and magistrates and hearing officers.

We are pleased to send you the course catalog for the 2009 Florida College of Advanced Judicial Studies. The AJS College is scheduled for June 1-5, 2009, at the Sanibel Harbor Resort in Fort Myers. This unique and important educational event is funded through the Court Education Trust Fund, and we hope you will plan to take advantage of this opportunity.

Once you have reviewed the course descriptions, you may apply online at the link located on the HOW TO APPLY page of the catalog. In order to be considered for attendance at the AJS College, you must submit the online application.

If you are not able to open the attached AJS course catalog, it can also be found on the intranet at [http://intranet.flcourts.org/osca/Judicial\\_Education/2009AJS/CourseCatalog.pdf](http://intranet.flcourts.org/osca/Judicial_Education/2009AJS/CourseCatalog.pdf).

If you have any questions or need additional information, please contact Ann Luchini at (850) 488-1423 or [luchinia@flcourts.org](mailto:luchinia@flcourts.org) or Beverly Brown at (850) 922-5084 or [brownb@flcourts.org](mailto:brownb@flcourts.org).

Course Catalog  
for  
Florida's  
Trial Judges,  
Appellate Judges,  
General  
Magistrates and  
Child Support  
Enforcement  
Hearing Officers



June 1-5, 2009  
Sanibel Harbour Resort  
Ft. Myers

*FLORIDA COLLEGE OF*

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20TH CIR 02826

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## A MESSAGE FROM THE DEAN . . .



Dear Colleagues,

In these troubled times, the judicial branch is being called upon to resolve the difficulties of our society with fewer resources, time and opportunities for quality, relevant and current education. It is now more important than ever that we continue to be able to meet the needs of our citizenry by being well-educated and well-informed so that we can make well-reasoned decisions. It is to that end that the Florida Court Education Trust Fund was created. Its purpose is to provide education to our branch, from court filing fees rather than general revenue tax dollars. Despite these tough economic times, we are still obligated to meet our responsibility of serving the public well.

Therefore, on behalf of the faculty and OSCA staff, it is with great pride that we present our course offerings for the 2009 College of Advanced Judicial Studies. We have sought to make these course offerings relevant to our present circumstances. Please join us in Sanibel from June 1, through June 5, 2009 for the 2009 AJS College.

I hope to see you there,

Gill S. Freeman

# AJS COLLEGE ORGANIZATION

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- Dean** **The Honorable Gill S. Freeman**  
*Circuit Judge, Eleventh Judicial Circuit, Miami*
- Associate Appellate Dean** **The Honorable William A. Van Nortwick, Jr.**  
*Appellate Judge, First District Court of Appeal, Tallahassee*
- Associate County Dean** **The Honorable Karl B. Grube**  
*Senior County Court Judge, Pinellas County, St. Petersburg*

## DEPARTMENT HEADS

- Handling Capital Cases Course Offerings** **The Honorable O.H. (Bill) Eaton, Jr., Dept. Head**  
*Circuit Judge, Eighteenth Judicial Circuit, Sanford*  
**The Honorable Kevin M. Emas, Dept. Head**  
*Circuit Judge, Eleventh Judicial Circuit, Miami*
- Criminal Course Offerings** **The Honorable Dava J. Tunis, Dept. Head**  
*Circuit Judge, Eleventh Judicial Circuit, Miami*
- Families in Court Course Offerings** **The Honorable Alan S. Apte, Dept. Head**  
*Circuit Judge, Ninth Judicial Circuit, Orlando*  
**The Honorable Judith L. Kreeger, Dept. Head**  
*Circuit Judge, Eleventh Judicial Circuit, Miami*
- Civil Course Offerings** **The Honorable Thomas H. Bateman, III, Dept. Head**  
*Senior Judge, Tallahassee*  
**The Honorable Donna L. McIntosh, Dept. Head**  
*Circuit Judge, Eighteenth Judicial Circuit, Sanford*
- General Interest Course Offerings** **The Honorable Terry P. Lewis, Dept. Head**  
*Circuit Judge, Second Judicial Circuit, Tallahassee*  
**The Honorable Ronald J. Rothschild, Dept. Head**  
*Circuit Judge, Seventeenth Judicial Circuit, Ft. Lauderdale*
- General Magistrates' and Hearing Officers' Course Offerings** **Robert J. Jones, Dept. Head**  
*General Magistrate, Eleventh Judicial Circuit, Miami*

## COURT EDUCATION STAFF OFFICE OF THE STATE COURTS ADMINISTRATOR

**Martha Martin, Chief of Court Education**

- |  |   |
|--|---|
| <b>Lynne Winston, Supervising Sr. Attorney, AJS Lead</b> | <b>Cathy Brockmeier, Court Education Consultant</b> |
| <b>Beverly Brown, AJS Lead Program Coordinator</b>       | <b>Jo Deyo, Senior Attorney</b>                     |
| <b>Ann Luchini, AJS Assistant Program Coordinator</b>    | <b>Janice Fleischer, Senior Attorney</b>            |
|  | <b>Bart Moore, Senior Attorney</b>                  |
|  | <b>Susan Morley, Senior Attorney</b>                |
|  | <b>Dan Rettig, Senior Attorney</b>                  |
|  | <b>Danica Winter, Senior Attorney</b>               |

# PROGRAM INFORMATION

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## PURPOSE

The Florida College of Advanced Judicial Studies (AJS) annually offers a comprehensive continuing judicial educational curriculum for all of Florida's trial and appellate court judges. In-depth courses are designed for experienced judges preparing for new judicial assignments and mid-career judges wishing to sharpen existing skills. The College also provides enrichment courses for other court personnel. The overarching purpose of the College is to encourage judges to focus intensively on matters of continuing jurisprudential interest in discrete areas of the law, while affording them opportunities to examine emerging legal issues from various judicial perspectives.

## MISSION STATEMENT

The mission of AJS is to improve the quality of judicial decision making, to promote the professional and personal growth of judicial officers, and enhance the quality of their public service by presenting a substantively diverse curriculum focusing on learning, performance, and professional development.

## POLICY STATEMENT

As a matter of policy, AJS structures its curriculum in a manner underscoring the importance of judicial fairness. Faculty members are expected to incorporate judicial fairness issues into the planning process, preparation of materials, and presentations. Issues involving race, age, gender, ethnicity, or sexual orientation should be addressed, keeping in mind the following:

- Learning objectives which incorporate judicial fairness issues must be developed early in the planning process;
- Judicial fairness must be fully integrated into the subject matter of the materials and presentations, including those addressing substantive areas of the law;
- Generalizing about an individual or group or casting individuals or groups into stereotypical roles must be avoided;
- Inappropriate humor must be avoided; and
- Faculty evaluations must include a performance element addressing effective treatment of judicial fairness in the materials and presentations.

## FACILITIES AND COSTS

Funding for judges, general magistrates, and child support enforcement hearing officers to attend the College is provided through the Court Education Trust Fund. All persons enrolled in college courses will be reimbursed for travel and lodging pursuant to Section 112.061, Florida Statutes, and FCEC policies. You will receive complete lodging and travel information upon acceptance of your application to attend the College.

## COURSE SELECTION

Judges may select multiple courses if the days do not conflict. Applicants planning to attend two courses that do not run consecutively will either need to enroll in a course to cover the missing day(s) or pay their own lodging and per diem expenses for those non-course days.

The General Magistrates' and Hearing Officers' Program is the only course available for general magistrates and child support enforcement hearing officers.

After course enrollment has been confirmed, you may switch courses through **May 20, 2009**, if an opening exists in the course you wish to attend, by contacting Ann Luchini at (850) 488-1423 or Beverly Brown at (850) 922-5084. You will not be allowed to change from your enrolled course(s) on-site, absent extraordinary circumstances and approval by the Dean.



# PROGRAM INFORMATION

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## PRIORITY ENROLLMENT

Judges changing divisions within six months of the College will be given priority for enrollment in courses specific to their new or changing assignment.

Rising county judges that did not attend the 2009 Florida Judicial College, Phase II fundamentals program will be given priority for enrollment.

Enrollment in the "Handling Capital Cases" course will be determined by a weighted set of criteria and verification by the chief judge that the completion of the course is necessary pursuant to Rule 2.215(b)(10) Fla.R.Jud.Admin.

Applicants for the "General Magistrates' and Hearing Officers' Program" will be prioritized as follows: **First Priority** - never received formal judicial education through either Advanced Judicial Studies (AJS), Florida Judicial College (FJC) or the June 2004 General Magistrates' Program; **Second Priority** - attended AJS in the past; **Third Priority** - attended the June 2004 General Magistrates' Program; and **Fourth Priority** - attended the 2008 FJC program.

Enrollment of applicants for the "An Introduction to Distance Learning" course will be determined based on a consideration of the following priorities: (1) completion of the Faculty Training Specialty Course (mandatory); (2) previously taught a distance learning course; (3) Florida Court Education Council member; (4) number of Florida judicial education courses taught in the last three years; and (5) willingness to commit to teaching a distance learning course.

## CONTINUING JUDICIAL EDUCATION CREDIT (CJE)

The CJE hours offered vary depending on the course. Your total credits are calculated on the basis of your attendance hours as shown on your credit reporting form, which is submitted online or with your travel voucher. Generally, 6.5 hours will be available for each full day of class attended. **However, absent a waiver from the Dean, no CJE credit will be given if you fail to attend the entire course.**

## FLORIDA BAR CONTINUING LEGAL EDUCATION (CLE) CREDIT FOR GENERAL MAGISTRATES AND CHILD SUPPORT ENFORCEMENT HEARING OFFICERS

CLE credit will be applied for by the Court Education Office and enrolled participants will be given the course number assigned by The Florida Bar upon completion of the course. All CLE reporting will be the responsibility of course participants.

## ETHICS CREDIT

The "Handling Capital Cases", "The Judge as Role Model" and "Justice or Just Us" courses are eligible for some ethics credits. Please check the course descriptions for details.

## ATTENDANCE

You may attend a course only if you have received confirmation of enrollment. Once enrolled in a course, you must attend all segments of that course, and you may not attend segments of other courses that run concurrently. Unless excused by the Dean of the College due to extraordinary circumstances, you must attend an entire course in order to: **(1) obtain any CJE credit for the course; and (2) obtain any travel reimbursement. Failure to attend the entire course, without a written excused absence from the Dean, will result in your inability to attend AJS at all in 2010. These are Florida Court Education Council requirements.**

## REGISTRATION FEE

All participants and Florida judicial/magistrate/hearing officer faculty will pay a reimbursable registration fee for the course(s), regardless of the length of the course, you attend and/or teach. If your travel does not include an overnight stay, your registration fee reimbursement will be reduced by the state per diem of \$6.00 for breakfast and \$11.00 for lunch. The Florida Legislature has determined anyone arranging single-day travel will not be reimbursed for breakfast, lunch, or dinner.

# PROGRAM INFORMATION

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## HOTEL INFORMATION

Submission of an application does **not guarantee** your enrollment in the College of Advanced Judicial Studies. Written confirmation of enrollment will be mailed soon after the March 31<sup>st</sup> application deadline. Complete lodging and travel information will be included.

### **SANIBEL HARBOUR RESORT**

17260 Harbour Pointe Drive  
Fort Myers, Florida 33908

Phone: (239) 466-4000

Reservations: 800-767-7777

Fax: (239) 466-2198

Website: [www.sanibel-resort.com](http://www.sanibel-resort.com)

## CANCELLATION

Please notify Court Education by calling Ann Luchini at (850) 488-1423 or Beverly Brown at (850) 922-5084 immediately if you become unable to attend a course. Many courses have waiting lists of applicants who wish to enroll and can attend the program if given adequate notice. **Failure to notify this office of your nonattendance by April 30, 2009, will result in your losing priority for attendance at the 2010 College of Advanced Judicial Studies. You will automatically be placed on a waiting list regardless of when you apply for the 2010 College.**

# HOW TO APPLY

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Click on the following link to submit your online application: [2009 AJS Online Application](#). You will be prompted to supply a password. The password is **apply** (all lowercase letters).

Applications should be submitted as soon as possible, but no later than the **March 31, 2009**, deadline. Courses have limited enrollment and registration is on a first-come, first-served basis. Applications received after the deadline will be considered for enrollment in courses that have not met their enrollment capacity.

If you have any problem viewing or completing the online application, please contact:

Ann Luchini  
(850) 488-1423  
[luchinia@flcourts.org](mailto:luchinia@flcourts.org)

Beverly Brown  
(850) 922-5084  
[brownb@flcourts.org](mailto:brownb@flcourts.org)

**Court Education**  
**Office of the State Courts Administrator**  
**500 South Duval Street**  
**Tallahassee, Florida 32399-1900**  
**(850) 922-5079**

**Remember:**

- You may select multiple courses **if the days do not conflict**.
- Applicants planning to attend two courses that do not run consecutively will either need to enroll in a course to cover the missing day(s) or pay their own lodging and per diem expenses for those non-course days.
- Courses have limited enrollment and registration is on a first-come, first-served basis. Applications received after the deadline will be considered for enrollment in courses that have not met their enrollment capacity.
- **You will be notified of your enrollment status after the March 31<sup>st</sup> deadline.** You will receive complete lodging and travel information when enrollment is confirmed in the College.
- You must attend all segments of every course in which you are enrolled; you may not attend segments of other courses that run concurrently.

# 2009 AJS COURSE SCHEDULE

MONDAY June 1	TUESDAY June 2	WEDNESDAY June 3	THURSDAY June 4	FRIDAY June 5
<i>All courses begin at 8:30 a.m. and end at 4:00 p.m. EXCEPT Friday courses end at 12:00 p.m.</i>				
<b>CRIMINAL COURSE OFFERINGS FOR JUDGES</b>				
Handling Capital Cases – Surviving the Death Penalty				The Judge as Role Model
Navigating Your Way From Trial to Postconviction	Searches, Seizures and Statements: Unlocking the Secrets	Criminal Evidence Workshop		
<b>FAMILIES IN COURT COURSE OFFERINGS FOR JUDGES</b>				
Transnational Families: Where International Law and Family Law Intersect	New Perspectives on Domestic Violence – One Size Does Not Fit All	Gangs, Thugs and Families	Termination of Parental Rights: CPR for your TPR	
			Current Issues in Parenting Plans	
<b>CIVIL COURSE OFFERINGS FOR JUDGES</b>				
Manage the Madness! Managing Complex Cases and Attorneys	That's Not Fair! Consumer Protection Law in Florida Courts	Products Liability – Danger in the Marketplace	The Last Phase in the Construction Sequence – Litigation: Resolving Claims Involving Defects and Construction Liens	Foreclosures and Residential Mortgages
<b>GENERAL INTEREST COURSE OFFERINGS FOR JUDGES</b>				
Judicial Writing and Editing Workshop	Judicial Spanish: <i>As easy as uno, dos, tres!</i>	Judicial Spanish: <i>As easy as uno, dos, tres!</i> <i>(repeat course)</i>		
Teaching in the 21st Century: An Introduction to Distance Learning	Justice or Just Us: Using Film to Examine Perceptions of Fairness in a World of Cultural Differences	Neuroscience in the Florida Courtroom: <i>Illusion or Reality?</i>		
Getting Affirmed: Research with Westlaw	Advanced Westlaw	Getting Affirmed: Research with LexisNexis	Advanced LexisNexis	
<b>COURSE OFFERINGS FOR GENERAL MAGISTRATES AND HEARING OFFICERS</b>				
	General Magistrates' and Hearing Officers' Program: The Fundamentals and Beyond			

# CRIMINAL COURSE OFFERINGS FOR JUDGES

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## Handling Capital Cases – Surviving the Death Penalty

### COURSE DESCRIPTION

This four-day course covers all phases of capital litigation from pre-trial motions to trial and penalty phases and postconviction relief. Pursuant to Florida Rule of Judicial Administration 2.215(b) (10) a judge must successfully complete this course before that judge is qualified to preside over a capital case. This course is eligible for **1 hour of judicial ethics credit**.

### LEARNING OBJECTIVES

- Identify the differences among the various death penalty schemes in the United States.
- Describe the role of Federal Courts in capital litigation, including analysis of recent decisions.
- Analyze and properly rule on typical pre-trial motions in capital cases.
- Give examples of case management tools and techniques which may be used effectively in capital cases.
- Identify legal and practical problems unique to selecting and “death qualifying” juries in capital cases.
- Identify and successfully address trial issues unique to capital cases.
- Rule correctly on evidentiary issues involving aggravating and mitigating circumstances in the penalty phase of a capital case.
- Discuss factors to consider when evaluating and weighing aggravating and mitigating circumstances in the penalty phase of a capital case.
- Properly manage and handle postconviction proceedings in capital cases.
- Recognize the most commonly raised claims in postconviction motions in capital cases.
- Discuss problems inherent in the discovery of public records in capital cases.
- Recognize the essentials of sentencing orders and prepare sentencing orders that will withstand appellate scrutiny.
- Recognize and appropriately resolve ethical and professionalism issues unique to capital cases.

### TARGET AUDIENCE

Enrollment in this course will be determined by a weighted set of criteria and verification by your chief judge that the completion of this course is necessary pursuant to Rule 2.215(b)(10) Fla.R.Jud.Admin. This course cannot be used as a substitute for the one-day Handling Capital Cases Refresher Course offered at the Circuit Judges’ Program.

### COURSE LENGTH

Monday, June 1:	8:30 a.m. – 4:00 p.m.
Tuesday, June 2:	8:30 a.m. – 4:00 p.m.
Wednesday, June 3:	8:30 a.m. – 4:00 p.m.
Thursday, June 4:	8:30 a.m. – 4:00 p.m.

### FACULTY

**The Honorable O.H. “Bill” Eaton, Jr.**

*Circuit Judge, Eighteenth Judicial Circuit, Sanford*

**The Honorable Kevin M. Emas**

*Circuit Judge, Eleventh Judicial Circuit, Miami*

**Alex E. Ferrer, Esquire**

*Gavel to Gavel, Inc., Miami*

**The Honorable Mary Barzee Flores**

*Circuit Judge, Eleventh Judicial Circuit, Miami*

**Professor Scott E. Sundby**

*Washington & Lee University School of Law, Lexington, Virginia*

**The Honorable Michael R. Weatherby**

*Circuit Judge, Fourth Judicial Circuit, Jacksonville*

# CRIMINAL COURSE OFFERINGS FOR JUDGES

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## Navigating Your Way From Trial to Postconviction

### COURSE DESCRIPTION

#### ***Sentencing: Beyond the Guidelines***

This session is designed for judges currently assigned to or slated for rotation into the criminal division. The course will review recent developments in enhanced and recidivist sentencing, consecutive versus concurrent sentencing, and considerations for jury findings in verdict forms. There will be a short overview of postconviction motions.

#### ***Plea Colloquys: It's a Novel, Not a Short Story***

This session is designed to instruct judges on how to conduct a full plea colloquy. You will be able to properly advise defendants of their rights and the consequences of their pleas which will reduce motions to withdraw pleas and/or motions for postconviction relief.

#### ***Jury Selection: Do It Right or Do It Over!***

This session will help judges to properly conduct Melbourne inquiries to determine when challenges for cause should be granted and participants will discuss issues unique to the high profile case.

#### ***Jurors Gone Wild: Dealing with Juror Misconduct***

This session covers allegations of juror misconduct at all three phases of trial: jury selection, the evidentiary portion and deliberations. The course will help judges identify and deal appropriately with juror misconduct, including determining whether to conduct juror interviews.

#### ***"I Can't Believe You Just Said That:" Closing Arguments***

Have you ever asked yourself, "Can you say that in closing?" This session will teach you to answer that question and avoid that dreaded label of "fundamental error" and, therefore, a new trial due to improper closing arguments.

### LEARNING OBJECTIVES

#### ***Sentencing: Beyond the Guidelines***

- Evaluate a defendant's criminal history to determine the appropriate sentencing enhancement scheme.
- Identify maximum possible sentence permitted for multiple counts.
- Draft interrogatory verdict form(s) to contain necessary jury findings of fact.
- Analyze and rule correctly on postconviction motions.

#### ***Plea Colloquys: It's a Novel, Not a Short Story***

- Conduct a full and proper plea colloquy.

#### ***Jury Selection: Do It Right or Do It Over!***

- Analyze and discuss the intricacies of Melbourne.
- Correctly rule on for cause challenges.
- Correctly rule on peremptory challenges.
- Manage jury selection in high profile cases.

#### ***Jurors Gone Wild: Dealing with Juror Misconduct***

- Determine whether allegations of juror misconduct warrant interview of the juror(s).
- Properly conduct and limit the scope of juror interviews.
- Rule correctly on motions for new trial based upon allegations of juror misconduct.

#### ***"I Can't Believe You Just Said That:" Closing Arguments***

- Recognize and rule correctly on permissible and impermissible statements in closing arguments.

### COURSE LENGTH

Monday, June 1: 8:30 a.m. – 4:00 p.m.  
 Tuesday, June 2: 8:30 a.m. – 4:00 p.m.

# CRIMINAL COURSE OFFERINGS FOR JUDGES

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## **Navigating Your Way From Trial to Postconviction, *continued***

### **FACULTY**

**The Honorable Beatrice A. Butchko**

*Circuit Judge, Eleventh Judicial Circuit, Miami*

**The Honorable Angela Cowden**

*Circuit Judge, Tenth Judicial Circuit, Bartow*

**The Honorable Robert F. Diaz**

*County Court Judge, Broward County, Ft. Lauderdale*

**Alex E. Ferrer, Esquire**

*Gavel to Gavel, Inc., Miami*

**The Honorable Donald G. Jacobsen**

*Circuit Judge, Tenth Judicial Circuit, Bartow*

**The Honorable Julie O’Kane**

*Circuit Judge, Ninth Judicial Circuit, Orlando*

**The Honorable Orlando A. Prescott**

*Circuit Judge, Eleventh Judicial Circuit, Miami*

**The Honorable Israel Reyes**

*Circuit Judge, Eleventh Judicial Circuit, Miami*

**The Honorable Jacqueline Hogan Scola**

*Circuit Judge, Eleventh Judicial Circuit, Miami*

**The Honorable Robert N. Scola**

*Circuit Judge, Eleventh Judicial Circuit, Miami*

**The Honorable Diane V. Ward**

*Circuit Judge, Eleventh Judicial Circuit, Miami*

# CRIMINAL COURSE OFFERINGS FOR JUDGES

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## Searches, Seizures, and Statements: Unlocking the Secrets

### COURSE DESCRIPTION

By attending this course, judges will be taught how to unlock the secrets of searches, seizures and statements as the Fourth and Fifth Amendments come alive. Topics will include warrantless searches, suppression hearings, police informants, Miranda rights, interrogations and the voluntariness of statements.

### LEARNING OBJECTIVES

- Recognize the exceptions to the warrant requirement.
- State the exceptions to the exclusionary rule.
- Apply the law to the evidence heard during motions to suppress hearings in an analytical way to arrive at a sound decision.
- Analyze the different types of contacts between the police and the public and determine what legal justification must exist for that contact to be constitutionally permissible.
- Identify the different types of “police informants” and determine how much credibility the case law has accorded to each type of informant.
- Recognize when an officer may conduct a frisk and determine what an officer is permitted to do when the officer suspects a concealed object is a weapon/contraband.
- Effectively determine when Miranda rights are required.
- Correctly determine whether statements are voluntary.
- Ascertain when interrogation must stop.

### COURSE LENGTH

Wednesday, June 3: 8:30 a.m. – 4:00 p.m.

### FACULTY

**The Honorable Michael F. Andrews**

*Circuit Judge, Sixth Judicial Circuit, Clearwater*

**The Honorable David A. Demers**

*Circuit Judge, Sixth Judicial Circuit, St. Petersburg*

**The Honorable Samuel J. Slom**

*County Court Judge, Dade County, Miami*



# CRIMINAL COURSE OFFERINGS FOR JUDGES

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## **Criminal Evidence Workshop**

### **COURSE DESCRIPTION**

One of the most important things you do as a judge is rule on evidentiary objections. These rulings often do not have the benefit of research or reflection. You are expected to rule immediately – and correctly. This one-day workshop will give you an opportunity to practice and hone your skills by ruling on a variety of evidence hypotheticals. Through discussion of these hypotheticals and the applicable code provisions, you will deepen your knowledge of this important body of law and develop an analytical framework for resolving certain common, but tricky, evidentiary issues.

### **LEARNING OBJECTIVES**

- Develop and utilize an analytical framework for resolving evidentiary issues.
- Properly rule on selected evidentiary objections.

### **COURSE LENGTH**

Thursday, June 4:           8:30 a.m. – 4:00 p.m.

### **FACULTY**

**Professor Emeritus Charles W. Ehrhardt**

*Florida State University College of Law, Tallahassee*

**The Honorable Terry P. Lewis**

*Circuit Judge, Second Judicial Circuit, Tallahassee*

# CRIMINAL COURSE OFFERINGS FOR JUDGES

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## Changing the Atmosphere: The Judge as Role Model - Establishing and Maintaining a Professional Courtroom through Actions, Expectations and Expert Writings

### COURSE DESCRIPTION

This four-part course will explore ways in which the judge is role model in order to ensure ethical standards are implemented and to improve professionalism in the courtroom by (1) creating a good example for attorneys by demonstrating personal professionalism; (2) expecting the same professionalism of attorneys; and 3) reviewing drafting techniques of opinion writing with the goal of avoiding reversal wherever possible.

The opening session includes a panel of county, circuit and appellate judges and will be moderated by Former Florida Supreme Court Justice, Raoul G. Cantero, III. Moderator Cantero will lead panel members who will describe how they set an example of professionalism, what they do to communicate their expectation that lawyers will act professionally, and how they react to unprofessional conduct.

The second session will combine small group work by participants working with provided scenarios followed by the panel members giving their reactions to the scenarios. (This session will be interactive).

The last two sessions will concentrate on professionalism as it is demonstrated in expert opinion writing. In session three, Former Justice Cantero will moderate a panel whose members will discuss with and instruct participants on refined opinion writing as it relates to avoiding reversals. In the fourth and final session, Former Justice Cantero will instruct participants on judicial writing. This course is eligible for **1.75 hours of continuing judicial education ethics credit**.

### LEARNING OBJECTIVES

- Recognize frequently encountered attorney ethics and professionalism problems.
- Develop and discuss techniques that prevent unprofessional/unethical conduct as well as encourage professional conduct.
- Assess the judge's role and responsibilities in a professional community of practice, and react accordingly.
- Demonstrate those actions that inspire confidence and pride in the justice system.
- Identify those elements in a judicial written opinion that best ensure insulation from reversal.
- Construct orders and opinions so that they are understandable.

### COURSE LENGTH

Friday, June 5: 8:30 a.m. – 12:00 p.m.

### FACULTY

**The Honorable Roberto A. Arias**

*County Court Judge, Duval County, Jacksonville*

**The Honorable Peter D. Blanc**

*Circuit Judge, Fifteenth Judicial Circuit, West Palm Beach*

**Raoul G. Cantero, III, Esquire**

*White & Case LLP, Miami*

**The Honorable Kerry I. Evander**

*Appellate Judge, Fifth District Court of Appeal, Daytona Beach*

**The Honorable Terry P. Lewis**

*Circuit Judge, Second Judicial Circuit, Tallahassee*

**The Honorable Linda Ann Wells**

*Appellate Judge, Third District Court of Appeal, Miami*

# FAMILIES IN COURT COURSE OFFERINGS FOR JUDGES

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## Transnational Families: Where International Law and Family Law Intersect

### COURSE DESCRIPTION

Separating transnational families often brings more than the “typical” issues to family courts. This course will include discussion of domesticating foreign judgments, jurisdictional and venue issues, the Hague child abduction, child support and adoption treaties, pre- and post-nuptial agreements signed outside the United States, and special considerations in formulating parenting plans for transnational families.

### LEARNING OBJECTIVES

- Identify the requirements to domesticate a foreign judgment and the available defenses to domestication.
- Determine whether your court has jurisdiction over, and is the appropriate venue for, parties and issues that transnational families present in family court.
- Utilize resources of the United States Central Authority (the U.S. State Department) that are available pursuant to adoption, child support, and child abduction treaties.
- Determine the elements of and defenses to a case for return of an allegedly abducted child as established according to the Hague Convention on the Civil Aspects of International Child Abduction.
- Communicate appropriately with a judge from another country in cases seeking return of an allegedly abducted child.
- Prepare an order for return of a child that is more likely to be effective in returning the child to the country of habitual residence.
- Appropriately apply special considerations for transnational families in developing parenting plans.

### COURSE LENGTH

Monday, June 1: 8:30 a.m. – 4:00 p.m.

### FACULTY

**The Honorable Amy Steele Donner**

*Circuit Judge, Eleventh Judicial Circuit, Miami*

**Lawrence S. Katz, Esquire**

*Lawrence S. Katz, P.A., Miami*

**The Honorable Judith L. Kreeger**

*Circuit Judge, Eleventh Judicial Circuit, Miami*

**The Honorable Melanie G. May**

*Appellate Judge, Fourth District Court of Appeal, West Palm Beach*

**Kathleen S. Ruckman**

*Deputy Director, Office of Children’s Issues, U.S. Department of State, Washington, D.C.*

# FAMILIES IN COURT COURSE OFFERINGS FOR JUDGES

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## **New Perspectives on Domestic Violence – One Size Does Not Fit All**

### **COURSE DESCRIPTION**

Recent research shifts the paradigm of domestic violence. Learn the latest research about family violence, learn how family violence affects children, and use that information to develop appropriate parenting plans for families where children are exposed to family violence. Learn the kind of questions that are supposed to be asked about family violence, how these questions should be structured, and how the results of evaluations and reports about family violence should be interpreted.

### **LEARNING OBJECTIVES**

- Identify various behaviors related to family violence that relate to the safety, well-being, and best interests of children.
- Discuss the new research on differentiation of family violence and explore how to apply that research to appropriate parenting plans.
- Utilize appropriate judicial gate keeping when ordering evaluations and programs that relate to families with domestic violence issues.
- Identify the relevant factors necessary for judicial decisions affecting children from families in which domestic violence has occurred.
- Develop an appropriate parenting plan for families in which children have been exposed to domestic violence.

### **COURSE LENGTH**

Tuesday, June 2:                    8:30 a.m. – 4:00 p.m.

### **FACULTY**

#### **The Honorable Robert L. Doyel**

*Circuit Judge, Tenth Judicial Circuit, Bartow*

#### **Billie Lee Dunford-Jackson, Esquire**

*Senior Attorney, Family Violence Department, National Council of Juvenile and Family Court Judges, Reno, Nevada*

#### **Evan Marks, Esquire**

*Marks and West, P.A., Miami*

#### **Phillip M. Stahl, Ph.D.**

*Licensed Psychologist, Queen Creek, Arizona*

# FAMILIES IN COURT COURSE OFFERINGS FOR JUDGES

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## Gangs, Thugs and Families

### COURSE DESCRIPTION

Gangs have been romanticized in stories and movies, but gang activity can have a real impact on the children and families of Florida. In this course, presenters will discuss the nature of gangs, the mindset of gang members, and why children join gangs. Participants will learn about the legal issues that are relevant to gang activity. Finally, participants will learn how to spot potential gang activity and recognize how gang activity may affect the children and families involved in juvenile and family cases.

### LEARNING OBJECTIVES

- Identify possible gang members and gang-related activity or behavior as it may arise in juvenile or family cases.
- Recognize the motivation of gangs and of children who join gangs.
- Discuss how gangs impact families and communities.
- Analyze the legal issues and correctly apply the law relevant to gang activity.
- Develop strategies to address youth involvement in gangs.

### COURSE LENGTH

Wednesday, June 3: 8:30 a.m. – 4:00 p.m.

### FACULTY

**The Honorable Alan S. Apte**

*Circuit Judge, Ninth Judicial Circuit, Orlando*

**Vance Arnett**

*Project Director, Gang Prosecutorial Unit, State Attorney's Office, Sixth Judicial Circuit, Clearwater*

**Darell Dones**

*Supervisory Special Agent, FBI Behavioral Science Unit, Quantico, Virginia*

**Donna Schulz**

*Law Enforcement Coordination Manager, U.S. Attorney's Office, Tampa*

# FAMILIES IN COURT COURSE OFFERINGS FOR JUDGES

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## Current Issues in Parenting Plans: Relocation, Recent Statutory Changes, and Plans for Families Affected by Asperger's Syndrome

### COURSE DESCRIPTION

Parenting issues often are at the heart of domestic relations cases. In recent years there have been significant changes to Chapter 61. In particular, statutory provisions relating to parenting and to relocation have changed significantly. In this course you will learn about statutory requirements and other factors to consider in making parenting and relocation decisions.

Parenting decisions also must consider a child's needs. Autism may not be what you expect. Individuals with Asperger's Syndrome are on the autism spectrum yet vary greatly in their abilities and limitations. One may win a Nobel Prize, while another struggles with the social skills necessary to maintain a low-paying job. What do you do when a parent or child in a family case before you has Asperger's Syndrome? Do the neurotypical siblings of a child with Asperger's also have special needs? What evaluations or interventions might you order? How should you structure your parenting plan? Learn the answers to these and other perplexing questions in an interactive course presented by Diane Adreon, M.A., a national expert on Asperger's Syndrome, the author of books on the subject, and the parent of a child with Asperger's Syndrome; Dr. Joann Hoza, a clinical psychologist with a children's medical clinic who has extensive experience with family law cases; and Circuit Judge Karen K. Cole, an experienced family law judge and the parent of a child with Asperger's Syndrome.

### LEARNING OBJECTIVES

- Identify the 2008 statutory changes to Chapter 61, relating to parenting.
- Correctly apply appropriate standards for relocation.
- Correctly apply statutory changes when formulating parenting plans.
- Identify the nature and symptoms of Asperger's Syndrome.
- Discuss how the strengths and weaknesses associated with Asperger's Syndrome may affect parenting skills.
- List the types of professionals whose evaluations and interventions may assist children and parents with Asperger's Syndrome.
- Structure a parenting plan that appropriately addresses the needs of a child with Asperger's Syndrome, the needs of a neurotypical sibling of such a child, and the abilities of a parent with Asperger's Syndrome.

### COURSE LENGTH

Thursday, June 4: 8:30 a.m. – 4:00 p.m.

### FACULTY

#### **Diane Adreon, M.A.**

*Associate Director, University of Miami, Center for Autism & Related Disabilities, Miami*

#### **The Honorable John M. Alexander**

*Circuit Judge, Seventh Judicial Circuit, St. Augustine*

#### **The Honorable Karen K. Cole**

*Circuit Judge, Fourth Judicial Circuit, Jacksonville*

#### **JoAnn Hoza, Ph.D.**

*Clinical Psychologist, Hope Haven Children's Clinic and Family Center, Jacksonville*

# FAMILIES IN COURT COURSE OFFERINGS FOR JUDGES

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## Termination of Parental Rights: CPR for your TPR

### COURSE DESCRIPTION

The importance of an error-free trial for Termination of Parental Rights cannot be overstated. Appellate reversal in this area of the law can be disastrous. A bad TPR decision can profoundly affect a child's life. The challenges presented are among the most difficult ever presented to judges during their judicial careers. The stakes are high for the numerous participants which include the child, birth parents, guardians, immediate family, including siblings and other relatives, prospective adoptive parents, ad litems, foster parents, the Department of Children and Families and Regional Counsel. Complications include strict timelines and statutory and case law requirements, as well as the media! In this course you will learn how to handle TPR from A to Z including: (1) How to handle TPR proceedings from start to finish and appeal-proof your rulings; (2) Prepare yourself for all of the unusual factual twists which are not so unusual in TPR cases; (3) Use guidelines and templates (which will be provided) for creation of proper final judgments with the specific findings which must be made.

### LEARNING OBJECTIVES

- Conduct a TPR proceeding, preliminary hearings and trials in accordance with the statutes and case law.
- Establish case management procedures that will allow you to stay within legal time frames.
- Generate final orders and judgments that can withstand appellate review.

### COURSE LENGTH

Thursday, June 4:           8:30 a.m. – 4:00 p.m.  
Friday, June 5:             8:30 a.m. – 12:00 p.m.

### FACULTY

#### **The Honorable Gail A. Adams**

*Circuit Judge, Ninth Judicial Circuit, Orlando*

#### **Krista Bartholomew, Esquire**

*Guardian Ad Litem Staff Attorney, Legal Aid Society of the Orange County Bar Association, Inc., Orlando*

#### **The Honorable Daniel P. Dawson**

*Circuit Judge, Ninth Judicial Circuit, Orlando*

#### **Jeffrey Gillen, Esquire**

*Statewide Appellate Attorney, Children's Legal Services, Department of Children and Families, West Palm Beach*

#### **The Honorable Sandra Sue Robbins**

*Circuit Judge, Fifth Judicial Circuit, Ocala*

#### **The Honorable James H. Seals**

*Circuit Judge, Twentieth Judicial Circuit, Ft. Myers*

# CIVIL COURSE OFFERINGS FOR JUDGES

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## Manage the Madness! Managing Complex Cases and Attorneys

### COURSE DESCRIPTION

This course will teach civil judges techniques for managing those complex cases that we all have on our dockets. Judges currently assigned to the Complex Business Litigation sections of their circuits will discuss the procedures they use to manage complex business cases. Learn how to bring peace to the “discovery battles” we all face. Special attention will be given to dealing with difficult lawyers. Participants will also have the opportunity to learn about best practices for controlling their caseloads, instead of their caseloads controlling them.

### LEARNING OBJECTIVES

- Identify those cases that need judicial management/control.
- Develop strategies to manage difficult, complex cases.
- Recognize other tools to assist in case management (e.g., alternative dispute resolution techniques, special and general magistrates).
- Identify techniques for controlling difficult attorneys.

### COURSE LENGTH

Monday, June 1: 8:30 a.m. – 4:00 p.m.

### FACULTY

**Merrick L. (Rick) Gross, Esquire**

*Carlton Fields, Miami*

**The Honorable Frederick J. Lauten**

*Circuit Judge, Ninth Judicial Circuit, Orlando*

**Professor Amy Mashburn**

*University of Florida, Levin College of Law, Gainesville*

**The Honorable Renee A. Roche**

*Circuit Judge, Ninth Judicial Circuit, Orlando*



# CIVIL COURSE OFFERINGS FOR JUDGES

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## That's Not Fair! Consumer Protection Law in Florida Courts

### COURSE DESCRIPTION

This course will cover the Consumer Protection Law issues that arise most frequently in Florida State Courts, including unfair trade and debt collection practices. It will equip participants to effectively handle emerging issues presented in consumer protection cases, including mortgage foreclosure and bankruptcy defenses.

### LEARNING OBJECTIVES

- Describe how federal and state consumer protection laws impact your court.
- Correctly rule on Florida Deceptive and Unfair Trade Practices Act (FDUTPA) claims and defenses.
- Define the legal parameters of permissible damages in FDUTPA actions.
- Correctly award attorney's fees in FDUTPA cases.
- Competently preside over civil government enforcement proceedings.
- Correctly rule on Florida Consumer Collection Practices Act (FCCPA) claims and defenses.
- Define the legal parameters of permissible damages in FCCPA actions.
- Correctly award attorney's fees in FCCPA cases.
- Effectively resolve consumer protection and bankruptcy issues in foreclosure cases.

### COURSE LENGTH

Tuesday, June 2: 8:30 a.m. – 4:00 p.m.

### FACULTY

**The Honorable Paul L. Huey**

*County Court Judge, Hillsborough County, Tampa*

**Thomas J. Roehn, Esquire**

*Carlton Fields, Tampa*

**Barbara A. Sinsley, Esquire**

*Barron, Newburger, Sinsley & Wier, PLLC, Lutz*

# CIVIL COURSE OFFERINGS FOR JUDGES

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## Products Liability - Danger in the Market Place

### COURSE DESCRIPTION

This course will provide a working knowledge of the law applicable to products liability cases. The various causes of action available, and regularly pled in this area of practice, will be explained and demonstrated in actual trial court examples including the theories of strict liability and negligence as applicable to products liability claims. The course will identify issues that a trial judge will encounter when ruling on challenges to choice of forum or venue and when determining whether punitive damages may be appropriately pled or recovered. Have you ever wondered about ruling on claimed privileges, discovery issues and the admissibility of evidence in products liability cases? Well, this course will help you rule correctly. Finally, the judge will be taught how to apply the laws regarding the admissibility of scientific evidence and the predicates for the admission of expert testimony.

### LEARNING OBJECTIVES

- Identify and distinguish various causes of action.
- Evaluate challenges to forum and venue.
- Manage discovery appropriately.
- Correctly decide whether punitive damages may be pled or recovered.
- Rule correctly on challenges to scientific evidence as well as the admission of expert testimony.
- Rule correctly on objections to admissibility of evidence of events pre-dating and post-dating the cause of action.

### COURSE LENGTH

Wednesday, June 3: 8:30 a.m. – 4:00 p.m.

### FACULTY

#### **The Honorable Tyrie W. Boyer**

*County Court Judge, Duval County, Jacksonville*

#### **The Honorable Lucy Chernow Brown**

*Circuit Judge, Fifteenth Judicial Circuit, West Palm Beach*

#### **Howard Coker, Esquire**

*Coker Schickel Sorenson Posgay, P.A., Jacksonville*

#### **The Honorable Gary M. Farmer**

*Appellate Judge, Fourth District Court of Appeal, West Palm Beach*

#### **Larry Stewart, Esquire**

*Stewart Tilghman Fox & Bianchi, P.A., Miami*

# CIVIL COURSE OFFERINGS FOR JUDGES

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## **The Last Phase in the Construction Sequence - Litigation: Resolving Claims Involving Defects and Construction Liens**

### **COURSE DESCRIPTION**

Among lawyers practicing in the construction law arena, it is often said that a construction project is never fully complete until the litigation is concluded. Although this sentiment is expressed jokingly, the reality is that construction projects, by their very nature, are fertile ground for disputes. The litigation that results often involves multiple parties and complex factual and legal issues. To be equipped to adequately preside over these matters, a trial judge needs to have a basic understanding of industry jargon, the responsibilities of the various players in the construction process and the myriad legal issues arising from the typical construction dispute. This course will address two particular aspects of a construction dispute: defective construction and construction liens and bonds.

### **LEARNING OBJECTIVES**

- Define common construction industry terms.
- Identify the various actors in the construction process and describe their roles as they pertain to defects and lien and bond disputes.
- Analyze legal issues pertaining to jurisdiction, forum selection, pleading, evidence, contract interpretation and the construction lien statute.

### **COURSE LENGTH**

Thursday, June 4: 8:30 a.m. – 4:00 p.m.

### **FACULTY**

#### **Bruce Alexander, Esquire**

*Casey, Ciklin, Lubitz, Martens & O'Connell, West Palm Beach*

#### **Kimberly A. Ashby, Esquire**

*Akerman Senterfitt, Orlando*

#### **The Honorable Kerry I. Evander**

*Appellate Judge, Fifth District Court of Appeal, Daytona Beach*

# CIVIL COURSE OFFERINGS FOR JUDGES

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## Foreclosures and Residential Mortgages

### COURSE DESCRIPTION

Are you feelin' the pain? Are you suffering from the crush of the thousands of residential mortgage foreclosure cases that have been filed and are pending in your courts? Do you want some relief? Then, this course is for you!

Everything you need to know about the mortgage foreclosure crisis, its affect on Florida's courts and how to relieve the strain and burden of your expanding foreclosure caseload, will be covered.

Your presenters, Judge Janet Ferris, a circuit judge who formerly served as the Secretary of the Florida Department of Business and Professional Regulation, Senior Judge Tom Bateman, who has chaired numerous Florida Supreme Court and Florida Bar committees that addressed differentiated case management, innovative and effective case management techniques and procedures, and April Charney, a nationally recognized consumer law legal aid lawyer who specializes in mortgage foreclosure training for legal aid and volunteer lawyers, have planned an informative, hands-on program for you.

As result of attending this course you will be able to handle your exploding foreclosure caseload much more efficiently and effectively. Please join us for this practical and timely course.

### LEARNING OBJECTIVES

- Discuss the current local and national situations regarding residential mortgages, servicing entities and securitized trusts, and recognize how mortgage foreclosure cases pending in Florida's courts are affected.
- Identify factors to be considered when determining whether the plaintiff has the authority to foreclose a residential mortgage.
- Utilize alternative dispute resolution techniques as a case management tool to resolve pending mortgage foreclosure cases in a more timely manner.
- Correctly rule on what documentation meets the minimum evidentiary burden to support granting relief in a foreclosure proceeding.

### COURSE LENGTH

Friday, June 5: 8:30 a.m. – 12:00 p.m.

### FACULTY

**The Honorable Thomas H. Bateman, III**

*Senior Judge, Tallahassee*

**April Charney, Esquire**

*Jacksonville Area Legal Aid, Inc., Jacksonville*

**The Honorable Janet E. Ferris**

*Circuit Judge, Second Judicial Circuit, Tallahassee*

# GENERAL INTEREST COURSE OFFERINGS FOR JUDGES

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## Judicial Writing and Editing Workshop

### COURSE DESCRIPTION

Through the use of actual court opinions and documents, you will learn to write and edit with “super-clarity” so that even the most hurried readers comprehend your intended message. Those who attend this class will be presented with principles and techniques of writing that produce prose that is both energetic and credible. You will also learn how to express differences of opinion with colleagues in the context of a decision in a professional manner. In particular, you will learn the nature and importance of individual style in anyone's writing.

The first day of this two-day program will be a presentation by Professor Terrell of his approach to writing and editing at every level of an opinion -- from overall organization to sentence structure -- while the second day will be devoted to editing exercises and review of Florida court opinions. An important element of this program will be the development of feedback skills that will allow you to communicate to clerks more effectively the elements you want to see in their work.

Using gentle humor and real examples, Professor Terrell will take participants on a journey of self-evaluation and creative enhancement, while developing the skills needed to write with precision and clarity. This course is one that is practical and entertaining -- and therefore not to be missed.

### LEARNING OBJECTIVES

- Discuss techniques creating “super-clarity” that will reach out and grab the minds of even the most hurried readers.
- Utilize techniques contributing to more effective and disciplined editing.
- Write in an energetic style that projects an image which enhances the writers’ credibility and expresses differences of opinion in a professional way.
- Write opinions that reflect careful consideration of the privacy rights of litigants and others involved in the case.

### COURSE LENGTH

Monday, June 1: 8:30 a.m. – 4:00 p.m.

Tuesday, June 2: 8:30 a.m. – 4:00 p.m.

### FACULTY

**Professor Timothy P. Terrell**

*Emory University School of Law, Atlanta, Georgia*

# GENERAL INTEREST COURSE OFFERINGS FOR JUDGES

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## Judicial Spanish: *As easy as uno, dos, tres!*

### COURSE DESCRIPTION

How do you tell a Spanish-speaking litigant that you have called for a court interpreter? How do you properly address “Señora María Teresa Álvarez González de Ordóñez” in the courtroom? What do you do when you must communicate with a Spanish-speaking litigant and there is no available interpreter?

In this hands-on course, participants will be given the tools they need to effectively handle these and other “real courtroom” scenarios that may arise. Using interactive and demonstrative learning techniques, participants will be given invaluable skills to facilitate interaction and communication with Spanish-speaking persons in their courtrooms.

### LEARNING OBJECTIVES

- Demonstrate a basic understanding of the communication between the Spanish-speaking litigants and the court interpreter.
- Communicate courtroom procedures in Spanish in a conversational manner.
- Identify the impact of cultural differences, including the custom and use of Hispanic names, on courtroom decorum.
- Recognize and correctly pronounce frequently used legal terms and phrases in Spanish.
- Use basic Spanish grammar principles to properly construct sentences commonly used in your specific court-appointed division.

### COURSE LENGTH

**This one-day course will be offered twice. You may apply for one day only.**

Wednesday, June 3: 8:30 a.m. – 4:00 p.m.

Thursday, June 4: 8:30 a.m. – 4:00 p.m.

### FACULTY

**The Honorable Mercedes A. Bach**

*Senior Judge, Key Biscayne*

**Stephanie H. Langston**

*President, Hands On Spanish, Inc., Monroe, Georgia*

**Cristina Pereyra-Shuminer, Esquire**

*Miami*

# GENERAL INTEREST COURSE OFFERINGS FOR JUDGES

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## Teaching in the 21st Century: An Introduction to Distance Learning

### COURSE DESCRIPTION

Designed for judges who have completed the Faculty Training Specialty Course (required), this course will introduce presenters to distance learning formats, many of which are currently in use for training Florida's non-judge court personnel (and some judges). Course participants will experiment with audio conferences, videoconferences, Web conferences and development of online learning, and develop strategies for selecting course formats that are appropriate for various topics and groups. Like the traditional faculty training course, this two-day course will conclude with a short teaching demonstration by participant teams.

No advanced computer skills are necessary; however, participants will have an opportunity to become familiar with distance learning formats before the course by participating in two short distance learning activities, including a one-hour web conference to be held on May 21, 2009, at 12:00 p.m. (required).

Because course size is limited, priority will be given to applicants as follows:

- (1) Applicant must have completed the Faculty Training Specialty Course;
- (2) Applicant has previously taught a distance learning course;
- (3) Florida Court Education Council member;
- (4) The number of courses, of any type, applicant has taught in the last three years to judges or other court personnel; and
- (5) Applicant is willing to commit to teach a distance learning course.

***\*Participants must bring their own laptop computer to class.***

### LEARNING OBJECTIVES

- Describe the principles of adult learning and the different types of adult learners.
- Select course formats that are appropriate for the topic and group.
- Identify effective distance learning tools and the basic methods used to teach with these tools.
- Demonstrate the effective use of one or more of these distance learning tools.

### COURSE LENGTH

Monday, June 1: 8:30 a.m. – 4:00 p.m.  
 Tuesday, June 2: 8:30 a.m. – 4:00 p.m.

### FACULTY

#### **The Honorable Peter Evans**

*County Court Judge, Palm Beach County, West Palm Beach*

#### **Joseph R. Sawyer**

*Distance Learning/Technology Specialist, The National Judicial College, Reno, Nevada*

#### **The Honorable William A. Van Nortwick, Jr.**

*Appellate Judge, First District Court of Appeal, Tallahassee*

#### **Jill Y. Wallace, Ph.D.**

*Instructional Designer, University of Nevada, Reno, Nevada*

# GENERAL INTEREST COURSE OFFERINGS FOR JUDGES

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## **Justice or Just Us: Using Film to Examine Perceptions of Fairness in a World of Cultural Differences**

### **COURSE DESCRIPTION**

This fascinating one-day course will use film to take you to the other side of the bench to help you recognize the differences among the litigants appearing before you, and assist you in developing strategies to assure that those differences do not affect the treatment of the litigants or the perception of fairness of your judicial decisions. This course is eligible for **2 hours of continuing judicial education ethics credit**.

### **LEARNING OBJECTIVES**

- Recognize the differences among cultures in their communities - their practices, lifestyles, and beliefs.
- Analyze the impact of language, terminology, bias, and stereotyping on court proceedings and the perception of fairness.
- Recognize his or her own biases and develop strategies to prevent those biases from affecting the fairness of the judge's decision-making.

### **COURSE LENGTH**

Wednesday, June 3: 8:30 a.m. – 4:00 p.m.

### **FACULTY**

#### **The Honorable Sandy Karlan**

*Circuit Judge, Eleventh Judicial Circuit, Miami*

#### **Wilhelmina Tribble**

*President and CEO, Lowe Tribble & Associates, Inc., Orlando*



# GENERAL INTEREST COURSE OFFERINGS FOR JUDGES

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## Neuroscience in the Florida Courtroom: *Illusion or Reality?*

### COURSE DESCRIPTION

Are brain scans more or less reliable than other scientific evidence? Is it a legitimate defense to claim that a tumor or a brain injury “*made me do it?*” Can neuroscience be used to prove competence or lack of capacity? Can brain scans prove factual innocence or guilt?

Who should have access to information about our brains? How should juries and judges assess neuroscientific information since most behaviors are driven by brain systems that we cannot control? What does neuroscience reveal about eye-witness identification?

After examining the core approaches and recent developments in neuroscience and brain imaging, attendees of this course will explore how these developments impact legal proceedings and judicial decision-making. Hands-on problem-solving exercises, based on actual cases and controversies, provide the attendees with the opportunity for challenging analysis and practical application of this fascinating scientific and legal synthesis!

### LEARNING OBJECTIVES

- Summarize the basic elements and core approaches of neuroscience.
- Distinguish between the potential and the limitations of neuroscience in the context of criminal and civil cases.
- Identify the situations in which brain injury may impact responsibility for criminal behavior.
- Determine whether brain imaging evidence is relevant and should be admitted.
- Analyze evidence in order to make informed decisions on legal issues that involve neuroscientific matters.

### COURSE LENGTH

Thursday, June 4: 8:30 a.m. – 4:00 p.m.

### FACULTY

#### **Adina Roskies, Ph.D.**

*Assistant Professor, Dartmouth College, Hanover, New Hampshire*

#### **Barry R. Schaller**

*Former Associate Justice, Connecticut Supreme Court, Hartford, Connecticut*

# GENERAL INTEREST COURSE OFFERINGS FOR JUDGES

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## Getting Affirmed: Research with Westlaw

### COURSE DESCRIPTION

This one-day program is a practical course focusing on the fundamentals and the most frequently used Westlaw research techniques. It starts from the very beginning for novice researchers and propels those who already have some basic knowledge and understanding of Westlaw to a better understanding of Westlaw's legacy research features. Effective judicial research that is fast and accurate will make for better judicial decisions and fewer reversals. This course is designed for judges who have not had professional Westlaw training or simply want to hone their research skills.

***\*Participants must bring their own laptop computer to class.***

### LEARNING OBJECTIVES

- Utilize Westlaw effectively and efficiently when fast and accurate decisions need to be made from the bench or in the office.

### COURSE LENGTH

Monday, June 1: 8:30 a.m. – 4:00 p.m.

### FACULTY

**Jamie Todd Foreman, Esquire**

*Government Account Manager, Thomson-West, Lake Worth*

**The Honorable Scott J. Silverman**

*Circuit Judge, Eleventh Judicial Circuit, Miami*

**Kristine K. Trudeau, Esquire**

*Government Account Representative, Thomson-West, Kissimmee*

# GENERAL INTEREST COURSE OFFERINGS FOR JUDGES

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## Advanced Westlaw

### COURSE DESCRIPTION

Stay on the cutting edge of effective and efficient legal research by becoming proficient in the full complement of Westlaw research tools and innovative research techniques. In addition to a quick refresher on the Westlaw environment, this class focuses specifically on Westlaw's legacy features, including advanced citation research, topic and key number searching, and field restrictions. Judges who complete this course will acquire the skills and creativity to attack legal research from all possible angles.

***\*Participants must bring their own laptop computer to class.***

### LEARNING OBJECTIVES

- Utilize advanced Westlaw skills effectively and efficiently when fast and accurate decisions need to be made from the bench or in the office.

### COURSE LENGTH

Tuesday, June 2: 8:30 a.m. – 4:00 p.m.

### FACULTY

**Jamie Todd Foreman, Esquire**

*Government Account Manager, Thomson-West, Lake Worth*

**The Honorable Scott J. Silverman**

*Circuit Judge, Eleventh Judicial Circuit, Miami*

**Kristine K. Trudeau, Esquire**

*Government Account Representative, Thomson-West, Kissimmee*

# GENERAL INTEREST COURSE OFFERINGS FOR JUDGES

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## Getting Affirmed: Research with LexisNexis

### COURSE DESCRIPTION

This one-day program is a practical course focusing on the fundamentals and advanced research techniques of LexisNexis. It starts from the very beginning for novice researchers and propels those who already have some basic knowledge and understanding of LexisNexis to another level. Effective judicial research that is fast and accurate will make for better judicial decisions and fewer reversals. For those judges who have not had professional training with LexisNexis or simply want to refresh their skills, this course is for you.

*\*Participants must bring their own laptop computer to class.*

### LEARNING OBJECTIVES

- Use LexisNexis effectively and efficiently when fast and accurate decisions need to be made from the bench or in the office.

### COURSE LENGTH

Wednesday, June 3: 8:30 a.m. – 4:00 p.m.

### FACULTY

**Stacey L. Hornsby, Esquire**

*Government Consultant, LexisNexis, Atlanta, Georgia*

**The Honorable Scott J. Silverman**

*Circuit Judge, Eleventh Judicial Circuit, Miami*

# GENERAL INTEREST COURSE OFFERINGS FOR JUDGES

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## Advanced LexisNexis

### COURSE DESCRIPTION

This one-day program is designed for those who are currently proficient at LexisNexis research, but want to do more. This course will take your research skills to a higher level. Advanced LexisNexis offers greater proficiency in legal research, as well as a broader range of research techniques. If you are interested in LexisNexis wizardry, this course is for you.

*\*Participants must bring their own laptop computer to class.*

### LEARNING OBJECTIVES

- Use advanced LexisNexis effectively and efficiently when fast and accurate decisions need to be made from the bench or in the office.

### COURSE LENGTH

Thursday, June 4: 8:30 a.m. – 4:00 p.m.

### FACULTY

#### **Stacey L. Hornsby, Esquire**

*Government Consultant, LexisNexis, Atlanta, Georgia*

#### **The Honorable Scott J. Silverman**

*Circuit Judge, Eleventh Judicial Circuit, Miami*

# COURSE OFFERINGS FOR GENERAL MAGISTRATES AND HEARING OFFICERS

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## General Magistrates' and Hearing Officers' Program: The Fundamentals and Beyond

### COURSE DESCRIPTION

This two-day course is designed to enhance the skills of general magistrates and child support enforcement hearing officers. Taught by experienced judges, general magistrates and hearing officers, the program will present issues and answers on a wide range of topics, through the sessions described below.

### LEARNING OBJECTIVES

#### ***General Magistrate and Hearing Officer Systems (History, Powers, Limitations, Procedures)***

- Discuss the role, authority and limitations of a general magistrate/child support enforcement hearing officer within the judicial system.

#### ***Effective Case Management***

- Identify tools for effectively and efficiently managing your caseload, including court and community resources when appropriate.
- Develop effective case management techniques for cases involving self-represented parties, family violence, and other challenging issues.

#### ***Court Records and Privacy***

- List types of data and court records that may be treated as confidential upon being placed in court files.
- Develop strategies to minimize the extent of confidential data that is not presently needed to determine issues but is being placed in court files.
- Outline procedures for promptly determining privacy and public records issues.

#### ***Handling Pro Se (Self-Represented) Litigant Cases***

- Identify and discuss methods for handling pro se (self-represented) litigants during the hearing.

#### ***Disqualification and Recusal***

- Discuss disqualification and recusal procedures.

#### ***Ex Parte Communications***

- Recognize and avoid improper ex parte communications.

#### ***Making a Record and Ruling on Objections***

- Discuss the necessity of establishing a complete and appropriate record.
- Recognize the need to rule promptly on objections to admissibility of evidence.
- Determine when a proffer is appropriate and suggest methods of preserving a proffer of testimony.

#### ***Preparation and Construction of Reports and Recommended Orders***

- Identify a magistrate report and recommendation that contains findings of fact and conclusions of law that will withstand appellate review.

#### ***Establishment and Modification of Child Support***

- Prepare proper findings of fact regarding child support awards and deviations, pursuant to child support guidelines and current case law.
- Determine criteria necessary to award a modification of child support.
- Properly apply the provisions of UIFSA.

#### ***Civil Contempt/Enforcement Proceedings***

- Identify the types of relief available for enforcement in civil cases.
- Determine whether a proceeding involves civil or criminal contempt.
- Identify proceedings where contempt is not an available remedy.
- Discuss the procedural and findings requirements of Florida Family Law Rule of Procedure 12.615.

# COURSE OFFERINGS FOR GENERAL MAGISTRATES AND HEARING OFFICERS

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## General Magistrates' and Hearing Officers' Program, *continued*

### ***Relocation and Paternity Disestablishment***

- Discuss current procedural requirements, burden of proof and findings of fact in paternity disestablishment actions and relocation actions.
- Identify the temporary relief available in relocation actions.

### ***Legislation and Rules Update***

- Identify recent changes to statutes and rules that affect family law and other civil law matters.

## **TARGET AUDIENCE**

Enrollment will be determined by the following priority system:

- First Priority - never received formal judicial education through either Advanced Judicial Studies (AJS), Florida Judicial College (FJC) or the June 2004 General Magistrates' Program;
- Second Priority - attended AJS in the past;
- Third Priority - attended the June 2004 General Magistrates' Program; and
- Fourth Priority - attended the 2008 Florida Judicial College.

## **COURSE LENGTH**

Tuesday, June 2:           8:30 a.m. – 4:00 p.m.  
Wednesday, June 3:       8:30 a.m. – 4:00 p.m.

## **FACULTY**

### **The Honorable Gary P. Flower**

*County Court Judge, Duval County, Jacksonville*

### **Jon J. Johnson**

*General Magistrate, Thirteenth Judicial Circuit, Tampa*

### **Robert J. Jones**

*General Magistrate, Eleventh Judicial Circuit, Miami*

### **Norberto S. Katz**

*Child Support Enforcement Hearing Officer, Ninth Judicial Circuit, Orlando*

### **Diane M. Kirigin**

*General Magistrate, Fifteenth Judicial Circuit, Delray Beach*

### **The Honorable Judith L. Kreeger**

*Circuit Judge, Eleventh Judicial Circuit, Miami*

### **Thomas A. Tilson**

*General Magistrate, Eleventh Judicial Circuit, Miami*

### **The Honorable Richard R. Townsend**

*County Court Judge, Clay County, Green Cove Springs*

**From:** Callanan, Richard </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=RCALLANAN>

**To:** Kellum, Ken

Rose, Penelope

**CC:** Suhar, Sharon

Cary, G. Keith

**Date:** 6/22/2010 12:26:04 PM

**Subject:** ?FW: Learning Opportunity for Senior Judges Assigned to Hear Foreclosure Cases

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Ken

Can you or Penelope ensure that this notice gets out to all SR Judges that may be hearing Foreclosure cases during the new civil backlog program next year? Thank you.

From: Melissa Henderson [mailto:HendersM@flcourts.org]

Sent: Tuesday, June 22, 2010 1:15 PM

To: Trial Court Administrators

Subject: Learning Opportunity for Senior Judges Assigned to Hear Foreclosure Cases

The following email was sent to Senior Judges today via email and will be mailed tomorrow to the Senior Judges that we do not have email addresses for.

Please let me know if you have any questions.

Melissa Henderson

Court Education Division

Office of the State Courts Administrator

500 South Duval Street

Tallahassee, FL 32399-1900

phone: 850/922-5086

fax: 850/922-9185

email: hendersm@flcourts.org

20TH CIR 02862



From: Melissa Henderson  
Sent: Tuesday, June 22, 2010 1:14 PM  
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 **20TH CIR 02863** opportunity to

brush up on current foreclosure law and procedures. In order to take the 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=P2A3LSL0XN0F0CSGBIVMVCQ?  
\\_requestid=217287](https://secure.hilton.com/en/hi/res/choose_dates.jhtml;jsessionid=P2A3LSL0XN0F0CSGBIVMVCQ?_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

**From:** [Greider, Christine </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=CGREIDER>](mailto:Greider,Christine@flcourts.org)

**To:** [Hendrickx, Jo-Ann](mailto:Hendrickx,Jo-Ann@flcourts.org)

**CC:**

**Date:** 6/23/2010 9:14:10 AM

**Subject:** ?RE: Course Selection - July 2010 Circuit Conference - July 26-28, 2010 - Marco Island Marriott

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Did it

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**From:** Hendrickx, Jo-Ann

**Sent:** Wednesday, June 23, 2010 7:15 AM

**To:** Greider, Christine

**Subject:** FW: Course Selection - July 2010 Circuit Conference - July 26-28, 2010 - Marco Island Marriott

**Importance:** High

**Jo-Ann Hendrickx**  
**Judicial Assistant to**  
**Honorable Christine Greider**  
**Circuit Court**  
**Tel: 863-675-5225**  
**Fax: 863-675-5361**

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**From:** Ann Luchini [<mailto:luchinia@flcourts.org>]

**Sent:** Tuesday, June 22, 2010 8:33 PM

**To:** Ann Luchini

**Subject:** Course Selection - July 2010 Circuit Conference - July 26-28, 2010 - Marco Island Marriott

**Importance:** High

***The following email is sent to you as a courtesy copy:***

You have received this e-mail because you have registered to attend the July 2010 Circuit Conference. We are requesting that you please take a few minutes to complete a survey to let us know which sessions you will most likely be attending. Your response is anonymous and does not require you to attend a particular session. We are gathering this information solely for the purpose of planning the room set-up and the printing of materials. To complete the session selection survey, click the following link and enter the password **circuit**  
<http://www.flcourts.org/checkbox/Survey.aspx?s=eb248d30998b45768cf712e9c60c0762>

Following is a copy of the table agenda for review before session selection.

Monday, July 26, 2010	8:00 am – 8:15 am – Welcome and Introductions (Monday only)					
8:15 am – 9:30 am	Florida State Court's Budgeting Process: How Does It Work?					
9:30 am – 9:45 am	BREAK					
9:45 am – 11:00 am	Speaking and Advocating for the Judicial Branch: What Can You Do Ethically?					
11:00 am – 11:05 am	STRETCH BREAK					
11:05 am – 12:15 pm	Problem Solving in the Context of Judicial Branch Leadership					
12:15 pm – 1:15 pm	LUNCH					
1:15 pm – 4:00 pm	CONFERENCE BUSINESS MEETING					
Tuesday, July 27, 2010	Criminal	Criminal HCC	Civil	Probate	UFC: Domestic Relations	UFC: Juvenile
8:00 am – 9:30 am	Postconviction	Handling Capital Cases Refresher Course	After the Verdict	Incapacity Hearings	Family Law Update	Decoding the Mysteries: DCF and DJJ
9:30 am – 9:45 am	BREAK					
9:45 am – 11:00 am	Jury Instructions/ Verdict Forms	Handling Capital Cases Refresher Course	Civil Law Update	Guardianship: Guardian Advocates	Bankruptcy for Family Judges	Psychotropic Medications
11:00 am – 11:05 am	STRETCH BREAK					
11:05 am – 12:00 pm	A Breakdown in Mental Health: Competency Issues	Handling Capital Cases Refresher Course	Bankruptcy for Civil Judges	Probate Law Update	Economic Sensitivity	Meaningful Access to Counsel
12:00 pm – 1:30 pm	LUNCH AND CONFERENCE SECTION MEETINGS					
1:30 pm – 2:45 pm	Sentencing	Handling Capital Cases Refresher Course	Roles of Duty Judges		Placement Issues in Family and Juvenile Cases: What Judge Need to Know About Grooming	
2:45 pm – 3:00 pm	BREAK					
3:00 pm – 4:30 pm	Hot Topics: Criminal Law Update	Handling Capital Cases Refresher Course	Nuts and Bolts of Foreclosure		Florida's Teen Courts: A Successful Model In Justice	
Wednesday July 28, 2010	Criminal		Civil		UFC: Domestic Relations	UFC: Juvenile
8:00 am – 9:30 am	Criminal Evidence		Complex Litigation Rule		Parent vs. Child	Juvenile Law Update
9:30 am – 9:45 am	BREAK					
9:45 am – 11:00 am	Tweets and Twitters: Troubles in the Courtroom?					
11:00 am – 11:05 am	STRETCH BREAK					
11:05 am – 12:00 pm	The Perception of Fairness Some Practical Pointers (ethics)					

If you have any questions or need additional information, please contact me. Thank you!

Ann M. Luchini  
 Court Education Program Coordinator  
 Office of the State Courts Administrator  
 Supreme Court Building  
 500 South Duval Street  
 Tallahassee, Florida 32399-1900  
 (850) 488-1423 fax: (850) 922-9185  
[luchinia@flcourts.org](mailto:luchinia@flcourts.org)

**From:** [Hendrickx, Jo-Ann </O=SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JHENDRICKX>](mailto:Hendrickx,Jo-Ann@SAO20/OU=CACJIS/CN=RECIPIENTS/CN=JHENDRICKX)

**To:** [Greider, Christine](mailto:Greider,Christine)

**CC:**

**Date:** 6/23/2010 6:15:16 AM

**Subject:** ?FW: Course Selection - July 2010 Circuit Conference - July 26-28, 2010 - Marco Island Marriott

**Jo-Ann Hendrickx**  
**Judicial Assistant to**  
**Honorable Christine Greider**  
**Circuit Court**  
**Tel: 863-675-5225**  
**Fax: 863-675-5361**

**From:** Ann Luchini [mailto:luchinia@flcourts.org]

**Sent:** Tuesday, June 22, 2010 8:33 PM

**To:** Ann Luchini

**Subject:** Course Selection - July 2010 Circuit Conference - July 26-28, 2010 - Marco Island Marriott

**Importance:** High

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						<b>20TH CIR 02867</b>

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If you have any questions or need additional information, please contact me. Thank you!

Ann M. Luchini  
 Court Education Program Coordinator  
 Office of the State Courts Administrator  
 Supreme Court Building  
 500 South Duval Street  
 Tallahassee, Florida 32399-1900  
 (850) 488-1423 fax: (850) 922-9185  
[luchinia@flcourts.org](mailto:luchinia@flcourts.org)