

§ 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 11th 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); *Blondo v. Powers*, 743 So. 2d 161 (Fla. 4th DCA 1999), (usury); *Heimmermann v. First Union Mortgage Corp.*, 305 F. 2d 1257 (11th Cir. 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

Albury, Janice

From: Guerra, Carmen
Sent: Thursday, July 01, 2010 3:57 PM
To: Albury, Janice
Subject: RE: Office/Courtroom Location & Phone Numbers / Foreclosure Sections I & II

Thank you Janice, I appreciate it!

Carmen H. Guerra, Sr. Secretary,
Court Personnel,
272-5247

From: Albury, Janice
Sent: Thursday, July 01, 2010 2:33 PM
To: Guerra, Carmen
Subject: FW: Office/Courtroom Location & Phone Numbers / Foreclosure Sections I & II

From: Melendi, Rick
Sent: Tuesday, June 29, 2010 12:15 PM
To: Bridenback, Mike
Cc: Wells, Tracy; Albury, Janice; Noll, Sharon
Subject: FW: Office/Courtroom Location & Phone Numbers / Foreclosure Sections I & II

fyi

From: Melendi, Rick
Sent: Friday, June 18, 2010 2:22 PM
To: Greno, Linda; Barton, James
Cc: Noll, Sharon
Subject: FW: Office/Courtroom Location & Phone Numbers / Foreclosure Sections I & II

Judge,

For ease of use and convenience, I revised the original email contacting the office/courtroom locations and contact information.

rtm

Section I

(General Civil, Divisions A, B, C, D & F)

Judicial Office, Suite 513

Office - Phone No.: (813) 272-8572
Hearing Room - Phone No.: (813) 272-8575
Senior Judge - Phone No.: (813) 272-8571

Judicial Library, Room 515

Case Mgr. - Phone No.: (813) 272-8583
Case Mgr. - Phone No.: (813) 272-8584

Section II

(General Civil, Divisions G, H, I, J & K)

Judicial Office, Suite 422 & Courtroom 409

Office Phone No.: (813) 272-5121

Courtroom - Phone No.: (813) 272-8581

Senior Judge - Phone No.: (813) 272-5773

Room 425

Case Mgr. - Phone No.: (813) 272-8578

Case Mgr. - Phone No.: (813) 272-8579

Albury, Janice

From: Drake, Patricia
Sent: Monday, June 28, 2010 10:48 AM
To: Albury, Janice
Subject: FW: Phone Numbers / Foreclosure Sections 1 & 2

Here are the numbers below. Thanks

From: Melendi, Rick
Sent: Thursday, June 17, 2010 7:23 PM
To: Drake, Patricia
Subject: RE: Phone Numbers / Foreclosure Sections 1 & 2

Yes, thank you.

From: Drake, Patricia
Sent: Thursday, June 17, 2010 6:27 PM
To: Melendi, Rick
Cc: Noll, Sharon
Subject: Phone Numbers / Foreclosure Sections 1 & 2

Will this work ok?

(Div A, B, C, D & F)
HR 513 – 7937 (polycom/stacks 6 calls) – 272-8575
Room 513 - Sr. Secretary – 7960 – currently has 272-8572
Room 513 - Sr. Judge – 7940 – 272-8571

(Div G, H, I, J & K)
CR 409 – 7937 (polycom/stacks 6 calls) – 272-8581
Room 422 - Sr. Secretary – 7960/7961 – 272-5121
Room 422 - Sr. Judge – 7940/7941 – 272-5773

HR425 - Two Case Managers
Case Mgr #1 – 7940/7941 – 272-8578
Case Mgr #2 – 7940/7941 – 272-8579

Judges' Library 515 - Two Case Managers
Case Mgr #1 – 7940/7941 – 272-8583
Case Mgr #2 – 7940/7941 – 272-8584

Schatzberg, Beth

From: Pride, Lisa [PrideL@hillsclerk.com]
Sent: Tuesday, July 13, 2010 1:48 PM
To: Schatzberg, Beth
Cc: Hickmon, Angelina; Moreno, Elisa; Gammage, Trillany; Greno, Linda; Snaveley Carla; Healy, Donna; Gary, Angela
Subject: RE: Foreclosure checklist

Beth,

I have no problem with leaving the checklist with the file. If you could punch holes and place it in the file on the opposite side of the clocked in pleadings which would be on top of our docket checklist.

Please let me know or call me if you need clarification.

*Lisa L Pride, Director
Clerk of the Circuit Court
Circuit Civil Division
P O Box 989
Tampa FL 33601
(813) 276-8100 x4807
pridel@hillsclerk.com*

From: Schatzberg, Beth [<mailto:schatzbm@fljud13.org>]
Sent: Tuesday, July 13, 2010 1:36 PM
To: Pride, Lisa
Cc: Hickmon, Angelina; Moreno, Elisa; Gammage, Trillany; Greno, Linda
Subject: Foreclosure checklist

Lisa-

We are filling out forms for each file that is on the docket. Some of them are being re-scheduled for a variety of reasons. Would the clerk's office be okay with us leaving the foreclosure checklist attached to the file so that when it comes back, we do not have to redo it, just update it?

Your input /suggestions are welcomed-

Beth

Schatzberg,Beth

From: Schatzberg,Beth
Sent: Tuesday, October 05, 2010 12:08 PM
To: Melendi, Rick; Hickmon,Angelina; Moreno,Elisa; Gammage,Trillany
Cc: Wells, Tracy
Subject: RE: Annotations of Daily Dockets

Sorry- the law firms are stating that they are cancelling them for Internal Review. It's now rare if cases go through.

From: Melendi, Rick
Sent: Tuesday, October 05, 2010 12:06 PM
To: Schatzberg,Beth; Hickmon,Angelina; Moreno,Elisa; Gammage,Trillany
Cc: Wells, Tracy
Subject: RE: Annotations of Daily Dockets

Please clarify what Strike- internal review mean? It would help if you provided me an example, situation or circumstance of when this annotation would be used.

From: Schatzberg,Beth
Sent: Tuesday, October 05, 2010 11:53 AM
To: Melendi, Rick; Hickmon,Angelina; Moreno,Elisa; Gammage,Trillany
Cc: Wells, Tracy
Subject: RE: Annotations of Daily Dockets

Based on the hearings held thus far, are we all good to write Strike – I/R (for internal review)?

Beth

From: Melendi, Rick
Sent: Monday, October 04, 2010 12:18 PM
To: Hickmon,Angelina; Moreno,Elisa; Gammage,Trillany; Schatzberg,Beth
Cc: Wells, Tracy
Subject: Annotations of Daily Dockets

Good Afternoon, Ladies:

This may be a regular annotating practice in which you have already been engaged in doing; but, just in case, I need for each of you to incorporate this into your daily case management practices and start annotating on the dockets all hearings that are cancelled - by whom and why, all hearing re-sets- by whom and why (if known), and all no-shows – who no showed attorney, respondent/defendant starting today in the p.m.

Thanks.

Schatzberg,Beth

From: Schatzberg,Beth
Sent: Wednesday, November 17, 2010 3:50 PM
To: Wells, Tracy
Subject: RE: MEETING

Ok- sounds good.

Beth

From: Wells, Tracy
Sent: Wednesday, November 17, 2010 3:50 PM
To: Sequeira, Maria; Schatzberg,Beth; Valdes,Ryan; Gammage,Trillany; Hickmon,Angelina; Moreno,Elisa
Cc: Melendi, Rick
Subject: MEETING

We need to meet tomorrow morning at **8:30 a.m. in Conference Room B**. Please make every effort to attend.

It will be a short meeting.

Tracy

Wells, Tracy

From: Wells, Tracy
Sent: Tuesday, September 14, 2010 2:00 PM
To: Gammage, Trillany
Subject: case file that I left on your desk

Trillany,

Please call me and give me a follow-up on that file that I left on your desk. The Attorney called Judge Arnold and wants to know why they do not have the judgment.

Tracy.

Bridenback, Mike

From: Thomas Genung [REDACTED]
Sent: Wednesday, June 09, 2010 10:20 AM
To: Sondra M. Lanier; Trial Court Administrators
Subject: RE: Foreclosure Case Management

Sondra,

I hope this email finds you well.

The 19th is using its resources as follows:

240 SR judge days at 5 days per week for 48 weeks:

3 days a week in St. Lucie County

1 day per week in Indian River County

1 day per week in Martin County

0 days per week in Okeechobee County

Along with these judicial resources, funding provides for 2 case managers, 1 secretary and expense dollars.

In our meeting with the clerks, we suggested a 3/5, 1/5, 1/5 division of the clerk money in accordance with our SR judge utilization, which they felt would be most equitable.

If this is fully responsive to your request, then you do not need to return my call.

Thanks.

From: Sondra M. Lanier [REDACTED]
Sent: Wednesday, June 09, 2010 9:47 AM
To: Trial Court Administrators
Subject: Foreclosure Case Management

Good morning. I'm sure that my esteemed colleagues are ahead of me on this, so would someone please share your plan? We have a conference call with our clerks this afternoon and I am working on my proposal.

Sondra Lanier
Trial Court Administrator
Third Judicial Circuit
(386)758-2163 Lake City
(386)362-1017 Live Oak
(386)362-2658 Fax

Bridenback, Mike

From: P.J. Stockdale [REDACTED]
Sent: Thursday, June 24, 2010 3:57 PM
To: Bridenback, Mike
Cc: Kristine Slayden; Arlene Johnson
Subject: ECONRECOV: List of Possible Events

Follow Up Flag: Follow up
Flag Status: Completed

Mike,

Sorry for the delay in getting back to you. Back to back meetings all ran long. As Kris was saying, we are trying to capture those circumstances that would prevent the court system from actively moving the case through to disposition. We started with a list of 23 events but we really want to pare that down to say 5 – 8 significant circumstances. Here's where we are at now

Type of Event

Set Default Judgment Hearing - routine
Set Default Judgment Hearing - expedited
Default Judgment Entered
Case Set for Hearing/Motions by Plaintiff - routine
Case Set for Hearing/Motions by Plaintiff - expedited
Summary Judgment/Final Judgment
Order to Show Cause
Emergency Motions - Other
Emergency Motions - Motion to Cancel/Reschedule Sale
Case Stayed or Abated - Bankruptcy
Case Stayed or Abated - Pending resolution of another case
Case Stayed or Abated - Agreement by all parties
Case Stayed or Abated - Neglect
Case Stayed or Abated - Stay on appeal
Case Stayed or Abated - Other
Case Disposed - Awaiting Sale
Petition/Motion - Other
Order - Other
Conference
Hearing
Trial
Postponement - Other
Mediation

Based upon our discussion today, maybe we can reduce it to something like

Case Stayed or Abated – Bankruptcy
Case Stayed or Abated - Pending resolution of another case
Case Stayed or Abated - Agreement by all parties

- Case Stayed or Abated - Stay on appeal
- No Action – Attorney inaction
- No Action – Insufficient/Inaccurate Documentation
- No Action – Lack of available court resources
- No Action – Other (see comments)

The idea is that a case would be placed in one of these status' when the case is in the courts ball field but the court can't take action on a case because of these circumstances. Also, we are looking for a good term to use to reflect the "can't take action" status that doesn't already have a loaded meaning within the courts. For example "inactive" has a specific meaning as does "stayed". I was thinking "No Action" but maybe "Delayed" would be better.

I was planning on having an prototype of the case tracking application ready to send to a few TCA's early next week. I'd appreciate if you would take a look at it. It is difficult to quickly knock off a one size fits all application but it will be very helpful to get some suggestions on how to make it more usable in the field.

Look forward to hearing from you
Thanks
PJ

PJ Stockdale
Senior Court Statistics Consultant
OSCA - Court Services
Supreme Court Building Annex
500 S Duval St
Tallahassee FL 32301-1900
(ph) 850.410.1523
(fax) 850.414.1342

FEDERAL HOUSING FINANCE AGENCY



STATEMENT

For Immediate Release
October 13, 2010

Contact: Corinne Russell (202) 414-6921
Stefanie Mullin (202) 414-6376

Statement By FHFA Acting Director Edward J. DeMarco On Servicer Financial Affidavit Issues

“On October 1, FHFA announced that Fannie Mae and Freddie Mac are working with their respective servicers to identify foreclosure process deficiencies and that where deficiencies are identified, will work together with FHFA to develop a consistent approach to address the problems. Since then, additional mortgage servicers have disclosed shortcomings in their processes and public concern has increased.

Today, I am directing the Enterprises to implement a four-point policy framework detailing FHFA’s plan, including guidance for consistent remediation of identified foreclosure process deficiencies. This framework envisions an orderly and expeditious resolution of foreclosure process issues that will provide greater certainty to homeowners, lenders, investors, and communities alike.

In developing this framework, FHFA has benefitted from close consultation with the Administration and other federal financial regulators.

The country’s housing finance system remains fragile and I intend to maintain our focus on addressing this issue in a manner that is fair to delinquent households, but also fair to servicers, mortgage investors, neighborhoods and most of all, is in the best interest of taxpayers and housing markets.”

(Attachment follows)

###

The Federal Housing Finance Agency regulates Fannie Mae, Freddie Mac and the 12 Federal Home Loan Banks. These government-sponsored enterprises provide more than \$5.9 trillion in funding for the U.S. mortgage markets and financial institutions.

FEDERAL HOUSING FINANCE AGENCY



Four-Point Policy Framework For Dealing with Possible Foreclosure Process Deficiencies

1. **Verify Process** -- Mortgage servicers must review their processes and procedures and verify that all documents, including affidavits and verifications, are completed in compliance with legal requirements. Requests for such reviews have already been made by FHFA, the Enterprises, the Federal Housing Administration, and the Office of the Comptroller of the Currency, among others. In the event a servicer's review reveals deficiencies, the servicer must take immediate corrective action as described below.

2. **Remediate Actual Problems** -- When a servicer identifies a foreclosure process deficiency, it must be remediated in an appropriate and timely way and be sustainable. In particular, when a servicer identifies shortcomings with foreclosure affidavits, whether due to affidavits signed without appropriate knowledge and review of the documents, or improperly notarized, the following steps should be taken, as appropriate to the particular mortgage:
 - a. **Pre-judgment foreclosure actions:** Servicers must review any filed affidavits to ensure that the information contained in the affidavits was correct and that the affidavits were completed in compliance with applicable law. If the servicer's review indicates either (a) that the information in a previously filed affidavit was not correct or (b) that the affidavit was not completed in compliance with applicable law, the servicer must work with foreclosure counsel to take appropriate remedial actions, which may include preparing and filing a properly prepared and executed replacement affidavit before proceeding to judgment.

 - b. **Post-judgment foreclosure actions (prior to foreclosure sale):** Before a foreclosure sale can proceed, servicers must review any affidavits relied upon in the proceedings to ensure that the information contained in the affidavits was correct and that the affidavits were completed in compliance with applicable law. If the servicer's review indicates either (a) that the information in a previously filed affidavit was not correct or (b) that the affidavit was not completed in compliance with applicable law, the servicer must work with foreclosure counsel to address the issue consistent with local procedures. Potential remedial measures could include filing an appropriate motion to substitute a properly completed replacement affidavit with the court and to ratify or amend the foreclosure judgment.

c. **Post-foreclosure sale (Enterprise owns the property):**

- **Eviction actions:** Before an eviction can proceed, servicers with deficiencies must confirm that the information contained in any affidavits relied upon in the foreclosure proceeding was correct and that the affidavits were completed in compliance with applicable law. If the servicer's review indicates either (a) that the information in a previously filed affidavit was not correct or (b) that the affidavit was not completed in compliance with applicable law, the servicer must work with foreclosure counsel to address the issue consistent with local procedures before the eviction proceeds. Potential remedial measures could include seeking an order to substitute a properly prepared affidavit and to ratify the foreclosure judgment and/or confirm the foreclosure sale.
- **Real Estate Owned (REO):** With respect to the clearing of title for REO properties, servicers must confirm that the information contained in any affidavits relied upon in the foreclosure proceeding was correct and that the affidavits were completed in compliance with applicable law. If the servicer's review indicates either (a) that the information in a previously filed affidavit was not correct or (b) that the affidavit was not completed in compliance with applicable law, the servicer must work with foreclosure counsel to address the issue consistent with local procedures and take actions as may be required to ensure that title insurance is available to the purchaser for the subject property in light of the facts surrounding the foreclosure actions.

d. **Bankruptcy Cases:** Servicers must review any filed affidavits in pending cases to ensure that the information contained in the affidavits was correct and that the affidavits were completed in compliance with applicable law. If the servicer's review indicates either (a) that the information in a previously filed affidavit was not correct or (b) that the affidavit was not completed in compliance with applicable law, the servicer must work with bankruptcy counsel to take appropriate remedial actions.

3. **Refer Suspicion of Fraudulent Activity** -- Servicers are reminded that in any foreclosure processing situation involving possible fraudulent activity, they should meet applicable legal reporting obligations.

4. **Avoid Delay** -- In the absence of identified process problems, foreclosures on mortgages for which the borrower has stopped payment, and for which foreclosure alternatives have been unsuccessful, should proceed without delay. Delays in foreclosures add cost and other burdens for communities, investors, and taxpayers. For Enterprise loans, delay means that taxpayers must continue to support the Enterprises' financing of mortgages without the benefit of payment and neighborhoods are left with more vacant properties. Therefore, a servicer that has identified no deficiencies in its foreclosure processes should not postpone its foreclosure activities.

FHFA will provide additional guidance should it become necessary.

Sequeira, Maria

To: Greno, Linda
Subject: Notice of Appeal of Foreclosure Action

If someone wants to file a Notice of Appeal for a Foreclosure Action, do they have to post a bond in the amount of the judgment or twice the amount?

Moreno,Elisa

From: Wells, Tracy
Sent: Monday, July 19, 2010 4:51 PM
To: Hickmon,Angelina; Sequeira, Maria; Moreno,Elisa; Wells, Tracy; Schatzberg,Beth; Gammage,Trillany
Cc: Bridenback, Mike; Melendi, Rick
Subject: MEETING WITH CLERK'S STAFF

ATTENTION:

We have a meeting scheduled for Friday, July 23th at 9:00 a.m. in the Jury Auditorium, Courthouse Edgecomb, **Room 201**. This meeting is a meet and greet so that you can put a face to the names of the people that we work with in the Clerk's Office.

Please be prompt for the meeting.

T

Bridenback, Mike

From: Bridenback, Mike
Sent: Friday, May 21, 2010 3:26 PM
To: Menendez, Manuel
Subject: RE: Foreclosure and Economic Recovery Non-recurring Funding FY 2010/11

No our plan as submitted was approved.

Michael L. Bridenback
Court Administrator
800 E. Twiggs Street, Suite 604
Tampa, FL 33602
p: 813.272.5894
f: 813.301.3800
[REDACTED]
www.fjud13.org



From: Menendez, Manuel
Sent: Friday, May 21, 2010 2:49 PM
To: Bridenback, Mike
Subject: FW: Foreclosure and Economic Recovery Non-recurring Funding FY 2010/11

Any impact on our plan?

From: Kristine Slayden [REDACTED]
Sent: Friday, May 21, 2010 2:42 PM
To: Trial Court Chief Judges; Trial Court Administrators
Cc: Trial Court Budget Commission; Lisa Goodner; Charlotte Jerrett; Dorothy Wilson; Gary Phillips; Theresa Westerfield; Heather Thuotte-Pierson; Kristine Slayden; Sharon Bosley; Sharon Buckingham
Subject: Foreclosure and Economic Recovery Non-recurring Funding FY 2010/11

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

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

Issue 1: FY 2010/11 Funding Allocations Approved

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

Issue 2: Types of Cases and Disposition Goals Approved

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

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

Issue 3: Budget Policy Considerations Approved

- a) In order to comply with legislative intent, any expenditure of any type utilizing this funding is strictly limited to direct support of the backlog reduction of the approved case types listed in Issue 2.
- b) In order to ensure that senior judges who are assigned to the Foreclosure and Economic Recovery initiative are paid with the appropriate funds, the current senior judge application will be modified to allow circuits to specify from which funding source the senior judge should be paid. The Trial Court Administrators are responsible for ensuring that the information is reported properly.
- c) Expenditures from the Expense category are limited to intra-circuit travel for staff, intra- and inter-circuit travel for Senior Judges, consumable office supplies, postage, copying, printing and reproduction. To maximize the Expense allotment, circuits are encouraged to use existing resources or surplus furnishings for any office furniture needs for OPS staff and/or Senior Judges. Subscriptions and the like are not allowable expenditures for this funding, neither are computers or other communication devices as those items are a county funding responsibility.
- d) A contingency for the Expense category was approved in the original proposal and factored into the appropriated amount. In order to access these contingency funds, a circuit must have exhausted its Foreclosure and Economic Recovery Expense allotment. Requests for additional Expense are to be made in writing to the TCBC Chair, with a copy to the TCBC Budget Management Committee Chair, and to the State Courts Administrator. The request must provide a complete, detailed explanation of how Expense funding came to be exhausted, what steps were taken to alleviate the impending shortfall, the amount requested and how that amount was calculated.

Issue 4: Funding/Plan Monitoring Approved

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

Issue 5: Clerk Assistance Approved

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

be informed of the collaborative work on this issue. In addition, the TCBC approved the requirement that the clerks of court provide data support for this initiative.

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

Directions:

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

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

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

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

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

Please let me know if you have any questions. Kris

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

Bridenback, Mike

From: Bridenback, Mike
Sent: Monday, June 07, 2010 10:55 AM
To: Barton, James ; Melendi, Rick; Snavely Carla
Subject: Data Reporting Requirements and Clerks' Allocations
Attachments: MF backlog project.PDF

fyi

Michael L. Bridenback
Court Administrator
800 E. Twiggs Street, Suite 604
Tampa, FL 33602
p: 813.272.5894
f: 813.301.3800



www.fljud13.org

Item V. A. Foreclosure and Economic Recovery Funding - Case Reporting System

Background

On 5/20/2010, the Trial Court Budget Commission (TCBC) discussed several issues related to the Foreclosure and Economic Recovery Funding. The Commission completed work on the first five issues leaving only the Case Reporting System and the FY2011/12 Legislative Budget Request (LBR) to be resolved. The LBR issue will be discussed on Agenda Item VII.

The TCBC voted that the focus for this project will be on Real Property/Mortgage Foreclosure cases. The following has been adopted as the primary goal of the Foreclosure and Economic Recovery Funding Initiative:

- ❖ 62% of all Real Property/Mortgage Foreclosure cases pending (non-disposed and reopened) will be disposed in FY2010-11

Issue

In order to monitor the success of this initiative, the following statistics will be calculated:

- Clearance rates
- The number of cases disposed
- The percent of backlogged cases
- The average age of target cases

Clerk of Court Data Requirements:

The Clerks of Court in each county will be required to provide to the OSCA a list of all cases, non-disposed or reopened (i.e. pending), as of June 30, 2010. The list should be provided to the OSCA no later than close of business July 9, 2010. The file will be submitted in a format determined by the OSCA:

1. Uniform Case Number,
2. The date the case was initiated,
3. The applicable SRS case type of the case
4. The date the case was reopened, if applicable
5. The date the case was originally disposed (for reopened cases only)
6. The SRS disposition category (for reopened cases only)

The Office of the State Courts Administrator will include in its audit schedule additional time to audit this data to ensure that the data reported is accurate. The Court Statistics and Workload Committee of the Trial Court Performance and Accountability Commission will oversee the data collection instruments and reporting elements.

Agenda Item V. B.: Update on Clerk of Court Operations Corporation Allocation of Clerks' Economic Recovery Funding

Background

The Clerks of Court Operations Corporation (CCOC) Executive Council met on May 25, 2010 to discuss their Finance and Budget (F&B) Committee's recommendation on the methodology for distribution of their foreclosure appropriation. They discussed the language in CS/HB 5401 (see language below) and were aware that the TCBC had asked the chief judges to work with the clerks on their plan.

CS/HB 5401 Enrolled - The sum of \$3,600,000 of non-recurring funds from the Clerks of Court Trust Fund is appropriated to the Clerks of Court Operations Corporation to be distributed to the clerks of court where the state court system has distributed the increased resources provided in the 2010-11 General Appropriations Act for workload associated with foreclosure and economic recovery. The corporation shall submit a budget amendment pursuant to chapter 216, Florida Statutes, to distribute the funding among the clerks of court.

The CCOC F&B's \$3.6 million recommended circuit allocation for the clerks of court (not county because they haven't done that yet), was based on two calculations. \$1.8 million was distributed proportionally to the \$6 million budget that the circuit courts are getting. The other \$1.8 million is distributed proportionally based on the total number of real property/mortgage foreclosure cases in the circuit (as calculated by the Office of the State Courts Administrator). The attached chart shows the two allocations and the total \$3.6 million allocation by circuit.

Since the CCOC F&B methodology does not allocate by county, there was discussion about an appropriate allocation in multi-county jurisdictions. It was decided that the clerks in multi-county jurisdictions should coordinate with each other, and all clerks, in every circuit, should meet with their chief judges to make sure that the county allocations and the clerks' plans match the plan of the chief judges in each circuit.

The clerks stated their understanding that the funding will be available on July 1st and they recognized the urgency to get the resources in place as soon as possible. They discussed the goal of the appropriation to clear the foreclosure backlog and agreed that they would hire resources to assist the courts in achieving that goal. Their chair, Clerk Howard Forman, offered to send a letter any chief judge, if contact was needed. They also passed a motion to develop a simple tracking system to make sure that they were able to track the money spent on this initiative. They plan to present a more formal plan for the tracking system at their next meeting on June 29, 2010.

**Trial Court Budget Commission
June 4, 2010
Tampa, Florida**

Agenda Item V. B.: Update on Clerk of Court Operations Corporation Allocation of Clerks' Economic Recovery Funding

Issues

An email was sent out on May 28, 2010 from the Office of the State Courts Administrator asking each chief judge to contact the clerks in their circuit as soon as possible about their plan to fund this initiative. Legislative staff has requested that the clerks' and courts' spending plans be submitted at the same time so that they can ensure that the two plans work together in support of the goal. The chief judges were informed that the Trial Court Budget Commission planned to discuss this matter again at their June 4th meeting, and were asked to provide any update on the status of the communication with their clerks before the meeting, if at all possible.

A letter was sent out on May 28, 2010, from Clerk Howard Forman, Chair of the CCOC Executive Council, to all chief judges in multi-county circuits (see attached letter to the first circuit). Mr. Forman requested that the chief judge meet with each of the clerks in their circuit to collaborate on a plan to provide resources to address the foreclosure backlog. He also asked the chief judges, after their collaboration with the clerks in their circuit, to provide any information and/or suggestions to help the CCOC make a decision to allocate dollars among the clerks in their circuit, as specific dollar amount dedicated to each county or as percentage of the circuit total. He is requesting a response by June 5, 2010.

Recommendation

Direct staff to follow up with the Trial Court Administrators in those circuits that have not reported on the status of their plan with the clerks.

DRAFT FORECLOSURE BACKLOG

Circuits	Counties	Foreclosure Cases	Courts Allocation	Proportionate share (B/\$5,836,494)	(A * \$3.214)	(C * \$1.8m)	Total (D + E)
		A	B	C	D	E	F
1	Escambia, Okaloosa, Santa Rosa, Walton	12,960	\$106,365	0.018224	\$41,661.31	\$32,803.43	\$74,464.74
2	Liberty, Leon, Wakulla, Franklyn, Gadsden, Jefferson	4,385	\$106,365	0.018224	\$14,096.05	\$32,803.43	\$46,899.48
3	Madison, Columbia, Suwanee, Lafayette, Dixie, Hamilton, Taylor	1,325	\$64,261	0.011010	\$4,259.35	\$19,818.37	\$24,077.72
4	Clay, Duval, Nassau	21,523	\$212,729	0.036448	\$69,187.99	\$65,606.54	\$134,794.53
5	Sumter, Citrus, Hernando, Marion, Lake	19,931	\$212,729	0.036448	\$64,070.34	\$65,606.54	\$129,676.88
6	Pasco, Pinellas	39,394	\$317,752	0.054442	\$126,636.24	\$97,996.09	\$224,632.33
7	Flagler, Putnam, St Johns, Volusia	21,585	\$212,729	0.036448	\$69,387.30	\$65,606.54	\$134,993.84
8	Levy, Union, Alachua, Baker, Bradford, Gilchrist	2,575	\$106,365	0.018224	\$8,277.61	\$32,803.43	\$41,081.04
9	Orange, Osceola	50,600	\$425,457	0.072896	\$162,659.12	\$131,212.78	\$293,871.90
10	Polk, Highlands, Hardee	12,979	\$106,365	0.018224	\$41,722.39	\$32,803.43	\$74,525.81
11	Miami-Dade	87,955	\$862,053	0.147700	\$282,740.77	\$265,860.87	\$548,601.65
12	Desoto, Manatee, Sarasota	25,557	\$212,729	0.036448	\$82,155.72	\$65,606.54	\$147,762.26
13	Hillsborough	38,180	\$427,504	0.073247	\$122,733.70	\$131,844.08	\$254,577.79
14	Bay, Calhoun, Gulf, Holmes, Jackson, Washington	4,634	\$106,365	0.018224	\$14,896.49	\$32,803.43	\$47,699.92
15	Palm Beach	63,402	\$646,540	0.110775	\$203,812.52	\$199,395.73	\$403,208.26
16	Monroe	2,671	\$106,365	0.018224	\$8,586.22	\$32,803.43	\$41,389.64
17	Broward	57,514	\$646,540	0.110775	\$184,884.92	\$199,395.73	\$384,280.65
18	Brevard, Seminole	31,052	\$319,094	0.054672	\$99,819.98	\$98,409.97	\$198,229.95
19	Okeechobee, Martin, St Lucie, Indian River	20,717	\$212,729	0.036448	\$66,597.02	\$65,606.54	\$132,203.56
20	Charlotte, Collier, Glades, Hendry, Lee	41,005	\$425,458	0.072896	\$131,814.97	\$131,213.09	\$263,028.06
		559,944	\$5,836,494	1	\$1,800,000.00	\$1,800,000.00	\$3,600,000.00

\$1,800,000
 \$3.2146072 per case
 (\$1.8m / 559,944)

Bridenback, Mike

From: Kristine Slayden [REDACTED]
Sent: Thursday, June 10, 2010 10:42 AM
To: Trial Court Administrators
Cc: Lisa Goodner; P.J. Stockdale; Arlene Johnson; Randy Long; 'John Dew'
Subject: Foreclosure and Economic Recovery Funding - Reporting Issues

Trial Court Administrators - On June 4, 2010, the Trial Court Budget Commission (TCBC) discussed the monitoring of the Foreclosure and Economic Recovery Funding Initiative. As reported in an earlier email from me, the TCBC voted at their May meeting that the focus for this project will be on Real Property/Mortgage Foreclosure cases and adopted as the primary goal of the Foreclosure and Economic Recovery Funding Initiative:

- ❖ 62% of all Real Property/Mortgage Foreclosure cases pending (non-disposed and reopened) will be disposed in FY2010-11

In order to monitor the success of this initiative, the following statistics will be calculated:

- Clearance rates
- The number of cases disposed
- The percent of backlogged cases
- The average age of target cases

To calculate the above statistics, you will need to track the foreclosure cases throughout the year. As a starting point, you will need information on the cases pending in your circuit at the beginning of this initiative. The following information will need to be requested from the clerks of court:

1. Circuit,
2. County,
3. Uniform Case Number,
4. The date the case was initiated,
5. The applicable SRS case type of the case
6. The date the case was reopened, if applicable
7. The date the case was originally disposed (for reopened cases only)
8. The SRS disposition category (for reopened cases only)

We met with the FACC yesterday and are planning to send out a letter to all 67 clerks of court asking them to send this data to the OSCA. **Please allow us to contact the clerks for this data so that the request can be uniform across the state and the timeframe will be consistent.** Once we get the data from the clerks (we are hoping to get it by July 9, 2010), we will format it in a reporting worksheet and send it out to you to track the cases, along with detailed instructions.

One issue that came up during the meeting yesterday was the issue of reopened cases not being reported as closed due to the SRS reporting requirements. We believe that the list of open cases that the clerks will provide may include some cases that are actually closed. Our instructions will request that you review the list to identify those cases that need to be removed due to the fact that they are already closed. Information from the JIS should allow your case manager to determine the status of the cases. Please let us know if the staff person that will be tracking the cases doesn't have access to JIS and we will make sure they get it.

In addition, the OSCA will include in its audit schedule additional time to audit this data to ensure that the data reported is accurate. The Court Statistics and Workload Committee of the Trial Court Performance and Accountability Commission will oversee the data collection instruments and reporting elements.

Please contact me if you have any questions or concerns about this reporting. Thanks. Kris

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

Bridenback, Mike

From: Bridenback, Mike
Sent: Wednesday, September 01, 2010 4:15 PM
To: Snavely Carla
Subject: Fwd: Order Setting CMC - RF
Attachments: ORDER SETTING CMC - RF.docx; ATT98869.htm

Sent from my iPhone

Begin forwarded message:

From: "Greno, Linda" <CGREN@jud.ct.gov>
Date: September 1, 2010 4:13:46 PM EDT
To: "Barton, James " <BA@jud.ct.gov>
Cc: "Menendez, Manuel" <MENENM@jud.ct.gov> "Rowland, Dave" <ROWLANDA@jud.ct.gov>, "Bridenback, Mike" <MB@jud.ct.gov>
Subject: Order Setting CMC - RF



Attached is the draft Order Setting Trial and other matters which you prepared after our noon meeting today. The people copied with this e-mail can make suggested changes.

Hickmon,Angelina

From: Wells, Tracy
Sent: Thursday, July 22, 2010 4:47 PM
To: Hickmon,Angelina; Moreno,Elisa; Valdes,Ryan
Cc: Melendi, Rick; Flores,Roberto
Subject: TRAINING ON MONDAY

ATTENTION:

Training is scheduled for **Monday** at **9:00 a.m.** for **Section I** to be introduced to the new Foreclosure & Economic Recovery Case Tracking System.

We will meet on the 6th floor of the Edgecomb in Conference Room B.

T.

Gammage, Trillany

From: Melendi, Rick
Sent: Friday, December 17, 2010 2:55 PM
To: Schatzberg, Beth; Gammage, Trillany; Sequeira, Maria; Valdes, Ryan
Cc: Albury, Janice
Subject: Emails

At our case manager meeting last week, I requested that all case managers produce any and all records you have regarding the mortgage foreclosure project. As such, please print all emails you have in your inbox, sent and deleted items related to foreclosures. In each of the email folders and any folders you may have in your cabinet relating to the mortgage foreclosure project, all you need to do is a search using the term "foreclosure" and the system will pull up all the emails relating to foreclosures. Then, print out all of those emails and deliver them to Janice. If possible, I would like to have those emails by 5:00 p.m. today. If this is not feasible, please get them to Janice by Monday, December 20, 2010.

Ryan and Maria I need for you to do the same.

Thank you.

Schatzberg,Beth

From: Schatzberg,Beth
Sent: Tuesday, October 19, 2010 4:30 PM
To: Greno, Linda
Subject: RE: Foreclosure checklist

Thank you!

Beth

From: Greno, Linda
Sent: Tuesday, October 19, 2010 4:18 PM
To: Schatzberg,Beth
Subject: RE: Foreclosure checklist

Please check to make sure this is the correct version.

From: Schatzberg,Beth
Sent: Tuesday, October 19, 2010 3:59 PM
To: Greno, Linda
Subject: Foreclosure checklist

Can I bother you for the checklist form? The copy center would like to keep a copy of it on file to print directly from.

Thanks!
Beth

Beth M. Schatzberg
Case Manager
Sect. II Mortgage Foreclosures
Hillsborough County Courthouse
800 E. Twiggs St., Ste. 425
(813) 272-8578

Bridenback, Mike

From: Melendi, Rick
Sent: Friday, September 10, 2010 8:03 AM
To: Flores,Roberto
Cc: Roberts Julie; Taylor,Ken; Tracy, Deb; Pisacane, Elvira; Noll, Sharon; Bridenback, Mike
Subject: Mortgage Foreclosure Tracking System Workbook - Monthly Data Report
Attachments: MFTracking SystemWorkbookProceduresDOC.PDF

Good morning,

The Trial Court Administrators from each circuit are required to submit a copy of the mortgage foreclosure tracking system workbook to OSCA on the 10th of each month following the end of the monthly period. Today is September 10, 2010. Accordingly, please merge Deb Tracy and Elvira Pisacane's copies of the tracking system workbook into one (1) workbook copy. Once the merger is complete, please follow the procedures outlined in the attached and forward same to Mr. Bridenback for final submission.

Lastly, should there be a problem with merging of the copies, please notify me immediately.

Thank you.

3. INSTRUCTIONS FOR REPORTING TO OSCA

These instructions establish the reporting standards to be followed when entering and submitting FERCTS information. The FERCTS workbook encapsulates all real property/mortgage foreclosure cases that are non-disposed or reopened (i.e. pending) as of June 30, 2010. The data from this tracking system will be used to provide the Supreme Court with information on the number of dispositions, average age and clearance rate of backlogged real property/mortgage foreclosure cases. Trial court administrators are to submit a copy of the tracking system workbook on a monthly basis to the Office of the State Courts Administrator (OSCA.) OSCA is to receive the copy no more than the 10th of the month following the end of the monthly period.

Following are the procedures to use when submitting a copy of the tracking system workbook to the OSCA.

- ✓ This workbook is almost entirely macro driven. Most Microsoft Office installations are installed with a high level of security set by default. To ensure that macros can run for this workbook, there are a few installation steps you must take before you open the workbook. Please see the separate FERCTS Installation Guide for installation instructions.
- ✓ The first transmission of the FERCTS workbook should include updates through July 30, 2010.
- ✓ A copy of the FERCTS workbook must be submitted to the OSCA by the 10th of the month following the end of the month being reported. For example, a copy of the workbook updating information through July 30, 2010 is to be sent to the OSCA by August 10, 2010.
- ✓ The workbook copy must be submitted via e-mail to FERCTS@flcourts.org. When submitting, the e-mail, the subject line must contain the following words: "foreclosure and economic recovery" and the date the workbook is submitted for. For example, a workbook submitted on August 9, 2010 for the July 2010 period would contain the subject line "Foreclosure and Economic Recovery Report – 2010/07".
- ✓ The workbook must be submitted in the Excel form provided by the OSCA. To ensure proper operation of the application, the file name is fixed as circuit number, underscore followed by county number and name ending with FERCTS.xls. An example file name is 01_17Escambia_FERCTS.XLS.
- ✓ Once the trial court administrators submit a report to OSCA, an error check process will be performed by the OSCA. If reporting errors are identified, the circuit will be notified and errors must be corrected. Corrections will be verified on the next monthly submission.

Bridenback, Mike

From: Heather Thuotte-Pierson [REDACTED]
Sent: Tuesday, May 11, 2010 1:47 PM
To: Bridenback, Mike
Subject: RE: Foreclosure and Economic Recovery Program

I know this will further reduce the amount of resources that you can commit to this Recovery Program, but we are required to pay it on these OPS positions. If you need to take resources from your expense fund to cover this part of the cost, please move those funds in your proposal. Heather

From: Bridenback, Mike [REDACTED]
Sent: Tuesday, May 11, 2010 1:14 PM
To: Heather Thuotte-Pierson
Subject: RE: Foreclosure and Economic Recovery Program

I did not do this with the original plan.

Michael L. Bridenback
Court Administrator
800 E. Twiggs Street, Suite 604
Tampa, FL 33602
p: 813.272.5894
f: 813.301.3800
[REDACTED]
www.fjud13.org



From: Heather Thuotte-Pierson [REDACTED]
Sent: Tuesday, May 11, 2010 1:01 PM
To: Trial Court Administrators
Subject: Foreclosure and Economic Recovery Program

Just as a reminder, when you are calculating how much of your funds you plan to allocate to the OPS category, you will need to factor in the 7.65% for FICA.


Thanks,
Heather

Heather Thuotte-Pierson
Office of the State Courts Administrator
Court Statistics Consultant
(850) 410-3376
[REDACTED]

Bridenback, Mike

From: Bridenback, Mike
Sent: Thursday, June 10, 2010 9:37 AM
To: Thullbery, Heather
Subject: FW: foreclosures

Make sure you get the application to Judges Barton and Arnold asap and any new applications as they come in just automatically send to the judges.

Michael L. Bridenback
Court Administrator
800 E. Twiggs Street, Suite 604
Tampa, FL 33602
p: 813.272.5894
f: 813.301.3800

www.fjud13.org



From: Barton, James
Sent: Thursday, June 10, 2010 9:02 AM
To: CIRCCIVJUD
Cc: CIRCCIVJA; Bridenback, Mike; Melendi, Rick; Snavelly Carla
Subject: foreclosures

We are in the final stages of designing the new residential foreclosure litigation plan, effective July 1. Here's an update:

1. Several applications have been received for the new case manager and JA positions. J. Arnold and I will be part of the hiring review process. Let me know if you want to participate.
2. The physical location of the two teams has been fixed: one team will be on the 5th floor with the judge and JA between J. Arnold and me and the case managers across the hall in the back section of the 5th floor library; the second team will be located on the 4th floor.
3. The clerk has agreed to immediately begin the hiring process for the new clerk positions. The clerk will also schedule two sales every day: one in the morning and one in the afternoon.
4. Our staff and the clerk's office have been working long and hard to make this procedure work. If you have specific questions or suggestions about any aspect of the plan, please let me know.
5. There's a meeting at 2 :00 pm today (Thursday) in my office with the clerk's office . Feel free to join us.

Bridenback, Mike

From: Bridenback, Mike
Sent: Thursday, June 10, 2010 11:20 AM
To: Barton, James ; Melendi, Rick
Subject: FW: Foreclosure and Economic Recovery Funding - Reporting Issues

fyi

Michael L. Bridenback
Court Administrator
800 E. Twiggs Street, Suite 604
Tampa, FL 33602
p: 813.272.5894
f: 813.301.3800
www.fljud13.org



From: Kristine Slayden [REDACTED]
Sent: Thursday, June 10, 2010 10:42 AM
To: Trial Court Administrators
Cc: Lisa Goodner; P.J. Stockdale; Arlene Johnson; Randy Long; 'John Dew'
Subject: Foreclosure and Economic Recovery Funding - Reporting Issues

Trial Court Administrators - On June 4, 2010, the Trial Court Budget Commission (TCBC) discussed the monitoring of the Foreclosure and Economic Recovery Funding Initiative. As reported in an earlier email from me, the TCBC voted at their May meeting that the focus for this project will be on Real Property/Mortgage Foreclosure cases and adopted as the primary goal of the Foreclosure and Economic Recovery Funding Initiative:

- ❖ 62% of all Real Property/Mortgage Foreclosure cases pending (non-disposed and reopened) will be disposed in FY2010-11

In order to monitor the success of this initiative, the following statistics will be calculated:

- Clearance rates
- The number of cases disposed
- The percent of backlogged cases
- The average age of target cases

To calculate the above statistics, you will need to track the foreclosure cases throughout the year. As a starting point, you will need information on the cases pending in your circuit at the beginning of this initiative. The following information will need to be requested from the clerks of court:

1. Circuit,
2. County,
3. Uniform Case Number,
4. The date the case was initiated,
5. The applicable SRS case type of the case

6. The date the case was reopened, if applicable
7. The date the case was originally disposed (for reopened cases only)
8. The SRS disposition category (for reopened cases only)

We met with the FACC yesterday and are planning to send out a letter to all 67 clerks of court asking them to send this data to the OSCA. **Please allow us to contact the clerks for this data so that the request can be uniform across the state and the timeframe will be consistent.** Once we get the data from the clerks (we are hoping to get it by July 9, 2010), we will format it in a reporting worksheet and send it out to you to track the cases, along with detailed instructions.

One issue that came up during the meeting yesterday was the issue of reopened cases not being reported as closed due to the SRS reporting requirements. We believe that the list of open cases that the clerks will provide may include some cases that are actually closed. Our instructions will request that you review the list to identify those cases that need to be removed due to the fact that they are already closed. Information from the JIS should allow your case manager to determine the status of the cases. Please let us know if the staff person that will be tracking the cases doesn't have access to JIS and we will make sure they get it.

In addition, the OSCA will include in its audit schedule additional time to audit this data to ensure that the data reported is accurate. The Court Statistics and Workload Committee of the Trial Court Performance and Accountability Commission will oversee the data collection instruments and reporting elements.

Please contact me if you have any questions or concerns about this reporting. Thanks. Kris

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

g.l.a. D...
 272-8575 - ...
 272-8576 - ...

	Monday	Tuesday	Wednesday	Thursday	Friday
				(1) 711	712
			Dr.		J... 712
8:45			B	J. Foster	1 400
9:00			Z	J. Baumann	33 "
9:15				J. Baumann	" "
9:30				J. Baumann	" "
9:45					
10:00					
10:15			I	J. Baumann	I 400
10:30				J. Baumann	
10:45					
11:00			K	J. Levens	" 400
11:15				J. Levens	" "
11:45				J. Levens	" "
12:00				J. Levens	" "
1:30					
1:45					
2:00			3	J. Foster	7 400
2:15				J. Foster	" "
2:30					
2:45					
3:00					
3:15					
3:30					

Specimen Zarten please x 2
 Signature Stamp
 Residential Jurisdictions only
 Arrangements } fans above
 Jans pg. } create
 Section

Councils currently set aside
 for August. Planned for
 permanent per month
 a batch.

1. Hag. location
2. please members redefined
 for telephone lines.

J. Foster to define process
 re: certification packets.
 7 days. fans to bag - Judges!
 Case mgs. packets in advance
 7 days - walk-in packets
 Open new calendar - July 1,
 2010

Checklist on Jans!

Case mgs. } Separate checklist for case
 mgs. } mgs. } stty. Ad. below list

of wks. -
 Agree to set for
 1 yr. -
 Review every
 wk. / 2 wks. -

Last wk. June - July
 w/ 5 judges. - Design of
 13TH CIR 2010

	Monday	Tuesday	Tuesday	Wednesday	Wednesday	Wednesday	Thursday	Friday
	7/5	7/6	7/6	7/7	7/7	7/7	7/8	7/9
8:45	Holiday	(2) S. J. ...		(2) S. J. ...			(1) S. J. ...	
9:00								
9:15	Su. Tex. 2N.		I 400 I	+ 513 E		II 1400 I		
9:30	I 513	J. Sisco	J. Baumann	J. Bergmann	J. Baumann			
9:45		J. Sisco		J. Bergmann	J. Baumann			
10:00		J. Sisco		J. Bergmann	J. Baumann	I 513 n		
10:15		J. Sisco		J. Bergmann	J. Baumann	J. Sisco		
10:30		J. Sisco		J. Bergmann	J. Baumann	J. Sisco	I 400 k	
10:45		J. Sisco		J. Bergmann	J. Baumann	J. Sisco	J. Levens	
11:00		J. Sisco		J. Bergmann	J. Baumann	J. Sisco	J. Levens	
11:15		J. Sisco	J. Baumann		J. Baumann	Sisco	J. Levens	
11:30		J. Sisco				J. Levens	
11:45		J. Sisco					
12:00		J. Sisco						
1:30						J. Levens	J. Cook	
1:45			I 400 A	I 513 E		J. Levens	J. Cook	
2:00		J. Sisco	J. Pendino	J. Bergmann		J. Levens	J. Cook	
2:15		J. Sisco	J. Pendino	J. Bergmann		J. Levens	J. Cook	
2:30		J. Sisco	J. Pendino	J. Bergmann		J. Levens	J. Cook	
2:45		J. Sisco	J. Pendino	J. Bergmann		J. Levens	J. Cook	
3:00		J. Sisco	J. Pendino	J. Bergmann		J. Levens	J. Cook	
3:15		J. Sisco	J. Pendino	J. Bergmann		J. Levens	J. Cook	
3:30		J. Sisco	J. Pendino	J. Bergmann		J. Levens	J. Cook	
3:45		J. Sisco	J. Pendino	J. Bergmann		J. Levens		
4:00		J. Sisco	J. Pendino	J. Bergmann		J. Levens		
4:15		J. Sisco	J. Pendino					
4:30								

	Monday	Tuesday	Tuesday	Wednesday	Wednesday	Thursday	Thursday	Thursday	Friday
	7/12	7/13	7/13	7/14	7/14	7/15	7/15	7/15	7/16
8:30	<i>11:50</i>	<i>12:50</i>	<i>11:50</i>	<i>11:50</i>	<i>11:50</i>	<i>11:50</i>	<i>11:50</i>	<i>11:50</i>	<i>11:50</i>
8:45	<i>See 12:15</i>		<i>II 12:15</i>	<i>II 12:15</i>					
9:00	J. Baumann		J. Baumann	J. Baumann					
9:15	J. Baumann		J. Baumann	J. Baumann					
9:30				J. Baumann	<i>J. Baumann</i>				
9:45				J. Baumann	J. Foster				<i>II 12:15</i>
10:00				J. Baumann	<i>Foster</i>				J. Arnold
10:15				J. Baumann	<i>curriculum</i>				J. Arnold
10:30				J. Baumann	<i>chair</i>		<i>Section</i>		J. Arnold
10:45			<i>J. Baumann</i>	J. Baumann					J. Arnold
11:00			J. Barton	J. Baumann		J. Barton	<i>" "</i>		J. Arnold
11:15			J. Barton			J. Barton	<i>" "</i>		J. Arnold
11:30									J. Arnold
11:45									J. Arnold
12:00									J. Arnold
						<i>J.B. to</i>			
		<i>J. Foster</i>			<i>J. Barton</i>	<i>hand</i>			
1:30		J. Foster			J. Barton	J. Barton	<i>Section</i>		
1:45		J. Foster	<i>II 12:15</i>		J. Barton	J. Barton	<i>B</i>		
2:00	<i>J. Foster</i>	J. Foster	J. Baumann			J. Barton		J. Arnold	
2:15	J. Foster		J. Baumann		<i>J. Foster</i>	J. Barton		J. Arnold	
2:30	J. Foster	J. Foster			J. Foster	J. Barton	J. Foster	J. Arnold	
2:45	J. Foster	J. Foster	<i>II 12:15</i>		J. Foster	J. Barton	J. Foster	J. Arnold	
3:00	J. Foster	J. Foster	J. Cook	<i>II 12:15</i>	J. Arnold	J. Barton	J. Foster	J. Arnold	
3:15	J. Foster	J. Foster	J. Cook		J. Arnold	J. Barton	J. Foster	J. Arnold	
3:30	J. Foster	J. Foster	J. Cook		J. Arnold	J. Barton	J. Foster		
3:45			J. Cook		J. Arnold	J. Barton	J. Foster		
4:00					J. Arnold		J. Foster		
4:15									
4:30									

	Monday	Monday	Tuesday	Wednesday	Thursday	Friday
	7/19	7/19	7/20	7/21	7/22	7/23
8:30	(1) Se. Justice		Section II cases	Section I cases	Section I cases	
8:45		J. S. 314	J. Pendino	J. S. 131	Se. 513	
9:00	J. S. 131 B	J. Foster	J. Levens	Shapiro & Fishman	Shapiro & Fishman	
9:15			J. Levens	Shapiro & Fishman	Shapiro & Fishman	
9:30			J. Levens	Shapiro & Fishman	Shapiro & Fishman	
9:45			J. Levens	Shapiro & Fishman	Shapiro & Fishman	
10:00			Shapiro & Fishman	Shapiro & Fishman	Shapiro & Fishman	
11:00			Shapiro & Fishman	Shapiro & Fishman	Shapiro & Fishman	
11:15						
11:30						
11:45						
					Section II Cases	
				J. S. 131 V.	513	
1:30				J. Levens	Shapiro & Fishman	
1:45			J. Pendino A	J. Levens	Shapiro & Fishman	
2:00			J. Pendino B	J. Levens	Shapiro & Fishman	
2:15	J. S. 131 B		J. Pendino C	J. Levens	Shapiro & Fishman	
2:30		J. Foster	J. Pendino	J. Levens	Shapiro & Fishman	
2:45			J. Pendino	J. Levens	Shapiro & Fishman	
3:00			J. Pendino	J. Levens	Shapiro & Fishman	
3:15			J. Pendino	J. Levens	Shapiro & Fishman	
3:30			J. Pendino	J. Levens		
3:45			J. Pendino	J. Levens		
4:00			J. Pendino			
4:15			J. Pendino			
4:30						

		Monday	Tuesday	Wednesday	Thursday	Friday
		7/26	7/27	7/28	7/29	7/30
8:30	(1) <i>S. Judge</i>					
8:45	<i>T. Hoar/H</i>					
9:00	J. Silver	<i>S. Judge Calverton</i>				
9:15	J. Silver					
9:30	J. Silver					
9:45	J. Silver					
10:00	J. Silver					
10:15	J. Silver					
10:30	J. Silver					
10:45	J. Silver					
11:00	J. Silver					
11:15	J. Silver					
11:30	J. Silver					
11:45	J. Silver					
12:00	J. Silver					
1:30	J. Silver					
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2:15	J. Silver					
2:30	J. Silver					
2:45	J. Silver					
3:00	J. Silver					
3:15	J. Silver					
3:30	J. Silver					
3:45						
4:00						
4:15						
4:30						

8/10

Change in schedule for 8/10; participants in Jaws
Session I: A, B, C, D, F
Session II: G, H, I, J, K

	Monday	Tuesday	Wednesday	Wednesday	Thursday	Friday
	8/2	8/3	8/4	8/4	8/5	8/6
8:30						
8:45						
9:00						
9:15						
9:30		J. Sisco	J. Bergmann			
9:45		J. Sisco	J. Bergmann			
10:00		J. Sisco	J. Bergmann			
10:15		J. Sisco	J. Bergmann	J. Sisco		
10:30		J. Sisco	J. Bergmann	J. Sisco		
10:45		J. Sisco	J. Bergmann	J. Sisco		
11:00		J. Sisco	J. Bergmann	J. Sisco		
11:15		J. Sisco		J. Sisco		
11:30		J. Sisco				
11:45		J. Sisco				
12:00		J. Sisco				
1:30						
1:45						
2:00		J. Sisco	J. Bergmann		J. Arnold	
2:15		J. Sisco	J. Bergmann		J. Arnold	
2:30		J. Sisco	J. Bergmann		J. Arnold	
2:45		J. Sisco	J. Bergmann		J. Arnold	
3:00			J. Bergmann			
3:15			J. Bergmann			
3:30			J. Bergmann			
3:45			J. Bergmann			
4:00			J. Bergmann			
4:15			J. Bergmann			
4:30			J. Bergmann			

Do not wish to
make / Reschedule
for Jaws.

	Monday	Tuesday	Wednesday	Thursday	Friday
	8/9	8/10	8/11	8/12	8/13
8:30					
8:45					
9:00	J. Levens				
9:15	J. Levens				
9:30	J. Levens	J. Sisco			
9:45	J. Levens	J. Sisco			
10:00		J. Sisco			
10:15		J. Sisco	J. Sisco		
10:30		J. Sisco	J. Sisco		
10:45		J. Sisco	J. Sisco		
11:00		J. Sisco	J. Sisco		
11:15		J. Sisco	J. Sisco		
11:30		J. Sisco			
11:45		J. Sisco			
12:00		J. Sisco			
1:30					
1:45					
2:00		J. Sisco			
2:15		J. Sisco			
2:30		J. Sisco			
2:45		J. Sisco			
3:00					
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3:30					
3:45					
4:00					
4:15					
4:30					

From: Bridenback, Mike
Sent: Tuesday, October 19, 2010 2:46 PM
To: Melendi, Rick; Barton, James
Subject: fyi

Print This Story

Witness: Foreclosure firm owner gave gifts for altering documents

By SHANNON BEHNKEN | The Tampa Tribune

Some employees of Florida's largest "foreclosure mill" were given jewelry, cars and houses from the firm, in exchange for altering and forging key documents used to obtain foreclosures, according to a statement released today by the Florida Attorney General's Office.

The office released transcripts of two interviews it conducted for its investigation into the law offices of David J. Stern. The sworn statements were from Kelly Scott, a former employee of Stern's and Mary R. Cordova, a former employee of G&Z, a process server used by Stern's office. The women's testimonies appear to back up that of former Stern's employee Tammie Lou Kapusta, whose statement was released last week. The three statements paint a picture of a secret system designed to speed up the foreclosure process. Attorneys and staff members forged signatures, changed dates, passed around notary stamps, the women say in interviews with attorney general's staff.

The two former Sterns employees described long tables where employees would sign as a witness and notarize documents without actually witnessing the signing. Twice a day, Scott said, the company's chief operating officer, Cheryl Samons, would go into the office and sign 500 documents at a time "without reading them.

Scott was Samons' legal assistant.

As a perk of Samons' job, Stern's office would routinely pay her personal mortgage, a car payment, her electric bills and her cell phone bill, according to Scott, who told investigators Stern also bought Samons a new BMW sport utility vehicle every year and gave her and other employees jewelry. Additionally, Stern purchased employee David Vargas a house, a car and a cell phone, Scott claims in her statement.

Scott said the office would move forward with cases, even if they knew the homeowner had not been properly notified of the lawsuit.

Fannie Mae and Freddie Mac were Stern's "babies," Scott said, and they routinely questioned documents and came to the office to check files. Last week Freddie and Fannie said they would audit Stern's files.

Someone inside both organizations would tip Sterns off to the visits, and Stern's staff would then alter client codes and hide files, according to Scott's statement. When Fannie and Freddie employees left, they'd bring the files back out. The other witness, Cordova, worked at G&Z for two months. The firm, which handled service for various foreclosure law firms, had special instructions for Stern, the firm's main client, according to Cordova's statement.

Every file was billed for at least four people to be served with the foreclosure paperwork, even if the firm knew there weren't that many people with interest in the property. These bills were sent out before the parties were served and, often, Cordova said, the company didn't follow through with the service. These bills are paid by the lenders and, eventually, passed along to the homeowners. Kapusta, whose statement was initially released last week, said she was fired after she questioned procedures. The other two employees said they left on their own.

[REDACTED] (813) 259-7804

Michael L. Bridenback
Court Administrator
800 E. Twiggs Street, Suite 604
Tampa, FL 33602
p: 813.272.5894
f: 813.301.3800



[REDACTED]
www.fljud13.org

Bridenback, Mike

From: Bridenback, Mike
Sent: Tuesday, July 20, 2010 10:51 AM
To: Melendi, Rick; Noll, Sharon; Wells, Tracy
Subject: Fwd: Cir13: Foreclosure and Economic Recovery Case Tracking System
Attachments: 13_29Hillsborough_FERCTS.xls; ATT282842.htm; FERCTS_Installation_Guide.pdf; ATT282843.htm; FERCTS_Users_Guide.pdf; ATT282844.htm

Please review and let' meet on Thursday to plan implementation

Sent from my iPhone

Begin forwarded message:

From: "P.J. Stockdale" <[REDACTED]>
To: "Bridenback, Mike" <[REDACTED]>
Subject: Cir13: Foreclosure and Economic Recovery Case Tracking System

Mike,

Please find attached the Foreclosure and Economic Recovery Case Tracking System (FERCTS) workbook for each county in your circuit. These workbooks have been pre-loaded with all non-disposed, reopened and pending cases as of June 30, 2010 as provided by the Clerks of Court for that county. We apologize for the delay in completing these workbooks for you. Since the Foreclosure Initiative began July 1, 2010, please update these workbooks to include all initiative activity beginning on July 1, 2010. Please email a copy of these workbooks to the OSCA on the 10th of each month. Since we are late getting this to you and there is probably a lot of work being done initially, we are going to skip the first reporting cycle and ask that you provide your first submission on September 10, 2010. Please see the attached FERCTS Users Guide for more information.

Since this tracking application is based upon VBA macros, there are a few steps that need to be taken to get it installed and running. I've attached a set of installations instructions to this email. However, each circuit has established different security procedures that could affect installation. You may want to have one of your IT people set the application up to ensure it works properly. Please have your IT folks give me a call, if needed, and I'll go through it with them. Please note that if you only see a spreadsheet and not a data entry screen, the application may not have installed properly.

Please do not hesitate to contact Court Services, Kris Slayden ([REDACTED]) or PJ Stockdale ([REDACTED]) if you have any questions or if we can be of any assistance.

Thanks

PJ

PJ Stockdale

Senior Court Statistics Consultant

OSCA - Court Services

Supreme Court Building Annex

500 S Duval St

Tallahassee FL 32301-1900

(ph) 850.410.1523

(fax) 850.414.1342

Melendi, Rick

From: Bridenback, Mike
Sent: Wednesday, November 17, 2010 2:08 PM
To: Nauman, Chris; Melendi, Rick
Subject: FW: ACLU Public Records Requests - clarification on item #2

Categories: Red Category

Michael L. Bridenback
Court Administrator
800 E. Twiggs Street, Suite 604
Tampa, FL 33602
p: 813.272.5894
f: 813.301.3800
bridenml@fjud13.org
www.fjud13.org



From: Laura Rush [<mailto:RushL@ficourts.org>]
Sent: Wednesday, November 17, 2010 2:06 PM
To: Trial Court Administrators
Cc: 'LKearson@jud11.ficourts.org'; Berghorn, Robin; 'Lisa DeBrauwere'
Subject: ACLU Public Records Requests - clarification on item #2

All,

ACLU attorney Larry Schwartztol by November 15 e-mail forwarded the following clarifications for circuit request item #2 – the following is an excerpt from his e-mail:

Circuit Request #2: The issue we discussed regarding this request was the concern that, as written, it would require an extremely labor-intensive review of all case files. Our intent is not to request records specific to individual cases, but rather the records relating to the rules, procedures, and practices governing all foreclosure cases within a particular circuit. To that end, I think we can adapt the language I provided above for OSCA Request #2. We therefore modify Circuit Request #2 to read:

"All records of the judicial branch that discuss, propose, assess, recommend, or require any rule, procedure, or practice to be used by any division, section, or case management unit created to manage, adjudicate, or dispose of foreclosure cases. To the extent this request encompasses records of the judicial branch also requested by Request #4, we do not seek duplicates of those records in response to this request."

Clarification on Request item #4 should be forthcoming shortly. The unresolved issue is how to exclude merely logistical e-mail from the scope of the request. As soon the clarification has been agreed upon, I'll forward the exact language to you.

Sincerely,
Laura Rush
General Counsel
Office of the State Courts Administrator
500 South Duval Street

Albury, Janice

From: Melendi, Rick
Sent: Thursday, June 10, 2010 9:53 AM
To: Albury, Janice
Cc: Noll, Sharon
Subject: FW: foreclosures

fyi

From: Barton, James
Sent: Thursday, June 10, 2010 9:02 AM
To: CIRCCIVJUD
Cc: CIRCCIVJA; Bridenback, Mike; Melendi, Rick; Snavely Carla
Subject: foreclosures

We are in the final stages of designing the new residential foreclosure litigation plan, effective July 1. Here's an update:

1. Several applications have been received for the new case manager and JA positions. J. Arnold and I will be part of the hiring review process. Let me know if you want to participate.
2. The physical location of the two teams has been fixed: one team will be on the 5th floor with the judge and JA between J. Arnold and me and the case managers across the hall in the back section of the 5th floor library; the second team will be located on the 4th floor.
3. The clerk has agreed to immediately begin the hiring process for the new clerk positions. The clerk will also schedule two sales every day: one in the morning and one in the afternoon.
4. Our staff and the clerk's office have been working long and hard to make this procedure work. If you have specific questions or suggestions about any aspect of the plan, please let me know.
5. There's a meeting at 2 :00 pm today (Thursday) in my office with the clerk's office . Feel free to join us.

Hickmon,Angelina

From: Melendi, Rick
Sent: Thursday, November 18, 2010 4:16 PM
To: Hickmon,Angelina; Moreno,Elisa; Valdes,Ryan; caranant@hillsclerk.com; healy@hillsclerk.com; mnassief@hcsotampa.fl.us; csomella@hcsotampa.fl.us; jlivingston@hcsotampa.fl.us; sgibson@hcsotampa.fl.us
Cc: Greno, Linda; Barton, James ; Williams, Judy; Arnold, James; Albury, Janice; Snavey Carla; Bridenback, Mike; Menendez, Manuel; Wells, Tracy; Schatzberg,Beth; Gammage,Trillany; Sequeira, Maria; Causey,Michael; Roberts, Julie; Taylor, Kenneth; Stafford, Becki; Drake, Patricia; Gant, Kimberly
Subject: Section I - Mortgage Foreclosure Courtroom Location - Week of November 22, 2010

Please note that Section I – Mortgage Foreclosure Hearings will be conducted in Courtroom 501, Edgecomb Building, 5th floor on **Monday, November 22, 2010, Tuesday, November 23, 2010 and Wednesday, November 24, 2010.**

A courtroom location schedule for Section I - Mortgage Foreclosure Hearings starting on Monday, November 29, 2010, will be forthcoming.

Moreno,Elisa

From: Schatzberg,Beth
Sent: Tuesday, October 05, 2010 11:53 AM
To: Melendi, Rick; Hickmon,Angelina; Moreno,Elisa; Gammage,Trillany
Cc: Wells, Tracy
Subject: RE: Annotations of Daily Dockets

Based on the hearings held thus far, are we all good to write Strike – I/R (for internal review)?

Beth

From: Melendi, Rick
Sent: Monday, October 04, 2010 12:18 PM
To: Hickmon,Angelina; Moreno,Elisa; Gammage,Trillany; Schatzberg,Beth
Cc: Wells, Tracy
Subject: Annotations of Daily Dockets

Good Afternoon, Ladies:

This may be a regular annotating practice in which you have already been engaged in doing; but, just in case, I need for each of you to incorporate this into your daily case management practices and start annotating on the dockets all hearings that are cancelled - by whom and why, all hearing re-sets- by whom and why (if known), and all no-shows – who no showed attorney, respondent/defendant starting today in the p.m.

Thanks.

Moreno,Elisa

From: Schatzberg,Beth
Sent: Wednesday, July 07, 2010 12:23 PM
To: Melendi, Rick; Gammage,Trillany; Moreno,Elisa; Hickmon,Angelina
Subject: RE: Keeping Track of Data!!

For a point of clarification – do you want the docket broken down specifically by 30, 60, 90 (or however long) closing dates or 120 cases heard & 115 have closing dates & 5 were cancelled for whatever reason?

Beth

From: Melendi, Rick
Sent: Tuesday, July 06, 2010 4:37 PM
To: Schatzberg,Beth; Gammage,Trillany; Moreno,Elisa
Subject: FW: Keeping Track of Data!!

fyi

From: Melendi, Rick
Sent: Tuesday, July 06, 2010 2:09 PM
To: Hickmon,Angelina
Subject: Re: Keeping Track of Data!!

Angelina,

For now, just record the disposition of the case on the docket. At some point, the case managers will have to go back and enter the disposition data on an excel data tracking form. The uniform data tracking form is being developed at OSCA. I am told the circuits should have the form by July 16, 2010.

From: Hickmon,Angelina
To: Melendi, Rick
Sent: Tue Jul 06 13:53:30 2010
Subject: Keeping Track of Data!!

Good afternoon,

How did you want the case managers to keep track of the final judgments? Should we make an excel spreadsheet or just keep it on the printout of the docket?

Moreno,Elisa

From: Wells, Tracy
Sent: Friday, December 10, 2010 12:27 PM
To: Hickmon,Angelina; Moreno,Elisa; Gammage,Trillany; Schatzberg,Beth
Cc: Melendi, Rick
Subject: Meeting at 3:30 today

MEETING NOTICE:

Rick would like to meet briefly with all of you today at 3:30 p.m. in Conference Room B on the 6th Floor of the Edgecomb.

Tracy.

Note: I know Beth is out 😊.

Moreno,Elisa

From: Moreno,Elisa
Sent: Monday, October 11, 2010 1:25 PM
To: Melendi, Rick
Subject: RE: Cancelled Hearings

Rick,

24 total cancelled for today

Breakdown:

15 AM cancellations (two cancellations at the time of hearing)

9 PM cancellations

Thanks!

Elisa

From: Melendi, Rick
Sent: Monday, October 11, 2010 1:18 PM
To: Moreno,Elisa
Subject: RE: Cancelled Hearings

All cancelled a.m. & p.m. hearings for "today" - which will include cancellations prior to the hearing and those cancellations that occur at the time of the hearing.

Sorry for not being clear.

From: Moreno,Elisa
Sent: Monday, October 11, 2010 1:14 PM
To: Melendi, Rick
Cc: Hickmon,Angelina
Subject: RE: Cancelled Hearings

Rick,

Do you need the cancelled hearings "at the table" or a list of all that were cancelled prior to today?

Thanks,

Elisa

From: Melendi, Rick
Sent: Monday, October 11, 2010 12:22 PM
To: Moreno,Elisa; Hickmon,Angelina; Schatzberg,Beth; Gammage,Trillany
Subject: Cancelled Hearings

Please provide me the total number of hearings cancelled this morning asap. Also, I will need the total number of hearings canceled by 3:30; 3:45 at the latest.

Thank you.

Nauman, Chris

From: Rowland, Dave
Sent: Wednesday, December 15, 2010 10:11 AM
To: Nauman, Chris
Subject: FW:
Attachments: Foreclosure Letter to Chief Justice Canady.docx

From: Cash, Kim **On Behalf Of** Menendez, Manuel
Sent: Tuesday, December 14, 2010 3:10 PM
To: Rowland, Dave
Subject: FW:

From: Nauman, Chris
Sent: Thursday, November 18, 2010 9:22 AM
To: Menendez, Manuel
Subject: RE:

Judge, attached are my suggestions. I've corrected typos, etc. You can accept or reject my suggestions as you see fit.

However, definitely change the citation for confidential proceeding relating to waiver of parental consent to abortion to 390.01114(4)(e). I apparently had a typo of my own when I gave you that citation and incorrectly said it was 4(c).

Overall, I thought the letter read well.

From: Menendez, Manuel
Sent: Wednesday, November 17, 2010 4:28 PM
To: Bridenback, Mike; Rowland, Dave; Nauman, Chris; Barton, James
Cc: Cash, Kim
Subject:
Importance: High

Here's a draft response to the Chief Justice's memo. Please review and give me your thoughts.

*Manuel Menendez, Jr.
Chief Judge, 13th Judicial Circuit of Florida
800 E. Twiggs St., Suite 602, Tampa, FL 33602
813-272-5022*

Letter to Chief Justice Canady

Copy to Lisa Goodner, State Court Administrator

Dear Chief Justice Canady:

This is in response to your memorandum regarding the recent letter you received from the Florida Press Associations and other organizations. Thank you for providing a copy of the correspondence. In that letter it is alleged that members of the public or the press have either been prevented from attending foreclosure proceedings or have been told they were not allowed to attend such proceedings. As it relates to the Thirteenth Judicial Circuit the letter states "...[a] court observer in Hillsborough County called the court to ask about the rules governing attendance at foreclosure proceedings and was told that the proceedings were not open to the public." To say that I was aghast to read such an allegation would be an understatement! ~~Other than for~~ With the exception of -proceedings that are deemed confidential by operation of law ~~deemed to be confidential~~ (such as proceedings for Termination of Parental Rights under F.S. 39.809(4), Adoptions under F.S. 63.162(1), and Judicial Waiver of Parental Notification of Abortion under F.S. 390.01114(4)(e)Ⓢ, 390.01116, and Rule 8.820(e) of the Florida Rules of Juvenile Procedure), we do not conduct court proceedings that are not open to the public. Hence I have attempted to determine the accuracy of the statement.

As one can well imagine, it is rather ~~is~~ difficult to investigate an allegation from an anonymous "court observer" that fails to provide any specifics as to when the call was allegedly made or who it was that allegedly provided the information. Nevertheless we have conducted an inquiry to determine whether there might be any validity to the allegation.

There are multiple entities that someone might call to obtain information about court proceedings. These include a judicial assistant for a judge, a judge, the court administrator's office and its various departments, the clerk of court and its various departments or the sheriff's court security and operations unit.

Each of the judicial assistants and judges who routinely handle mortgage foreclosure cases were contacted. None recalled a call concerning rules governing attendance at foreclosure proceedings, and none recalled advising any caller that such proceedings were not open to the public. Moreover, each confirmed their understanding that foreclosure hearings are indeed open to the public and indicated that they would not have otherwise told anyone that the hearings are closed.

The office of the Clerk of the Circuit Court was likewise contacted during our inquiry. The chief deputy for court operations who oversees the departments that support the handling of mortgage foreclosure cases inquired of her staff to determine if any of them might have received such a call. No one recalled fielding such a call. She further confirmed that her staff acknowledged an

understanding that foreclosure proceedings are in fact open to the public and that they would not have indicated otherwise to anyone making such an inquiry.

In addition, administrative staff members working with the mortgage foreclosure project were also interviewed. This included the chief of court operations, chief administrative assistant to the court administrator, the central receptionist who handles all calls coming into the court administrator's office, as well as the case managers and secretaries assigned to the foreclosure project. Again, no one recalls receiving a call regarding rules associated with attending foreclosure proceedings, and all confirmed that they understood that these proceedings are open to the public and stated that they would not have ever said otherwise to anyone who may inquire either in person or on the telephone.

The bailiffs who support the foreclosure proceedings were also contacted. They likewise fully understand the policy of foreclosure proceedings being open to the public. The sheriff has a comprehensive education and training program that addresses proper protocols for officers to address issues such as this. They too do not recall fielding any inquiry as to whether foreclosure proceedings are public.

Prior to implementation of the foreclosure project these cases were assigned to each of the 10 judges in our general civil division. The judges had no case management support to assist in managing their cases. The hearings in those cases, as with the hearings in most civil cases, were held in hearing rooms adjacent to chambers. Courtrooms were generally reserved for jury trials.

As a result of the limited funding for the foreclosure project, we now have the equivalent of 2 judges handling all foreclosure cases with the assistance of case management support. Due to space constraints we have been conducting foreclosure proceedings on two floors of the courthouse. One of the foreclosure divisions conducts the proceedings in a traditional courtroom setting on the 4th floor. Access to the courtroom is from a public lobby area. The other foreclosure division conducts the proceedings in a hearing room adjacent to judges' chambers in an area where entry is screened for security reasons. Unlike the courtroom setting, the hearing room is not set up to allow unfettered entry and exit from a public lobby area. Entry to the chambers area is monitored by bailiffs. Accordingly, access to the hearing room may in fact be a bit slower or more cumbersome than the entry to the courtroom. However, to my knowledge no one has been denied access to the foreclosure proceedings in either of the locations currently being utilized.

The senior judges hearing the foreclosure cases are very experienced judges. I have no doubt they are reviewing each case on its merits and making rendering judgments based on the facts and the law. Prior to the hearings our case managers review every case calendared to determine whether all required documents are properly filed and ready for consideration by the court. Hundreds of cases have been pulled from the calendar due to insufficient documentation. The case managers attend the hearings and record all actions taken by the judge. The cases are set in

30 minute blocks of time with no more than 15 cases scheduled per time block. We use an automated system where the attorneys schedule their cases on a web-based calendaring system. Before an attorney can calendar a foreclosure hearing through the court's automated calendaring system, the attorney is required to upload a copy of the motion or mortgage foreclosure packet which can then be accessed and reviewed by a judge or case manager. Once this task is completed, the attorney receives a confirmation that the hearing is scheduled. must certify that the case is ready for final resolution before it can be calendared. Notice to all associated parties is provided through this automated calendaring system. Many of the hearings are conducted telephonically.

Summary Judgment hearings are held Monday through Thursday from 9 am to 5 pm. Cases are calendared on two dockets each handled simultaneously by a senior judge. We have a pool of 6 senior judges who are assigned for a two week period. On Fridays of each week, non-dispositive motion hearings are held between 9 am and 5 pm. Beginning in December, we will also be conducting case management conferences for those cases that have not been calendared for summary judgment hearing. The purpose of these hearings is to determine why the case is not moving toward disposition and if feasible to set trial dates for those cases.

A possible source of the allegation that foreclosure proceedings are not open to the public might be from an internet blog published by attorney Matt Weidner (mattweidnerlaw.com). I am told that in a blog on September 24, 2010, Mr. Weidner states that "across this state, oftentimes in secret courtrooms that are hidden from the public using evidence and information that is hidden from the scrutiny of press or public view, judges will be signing thousands of foreclosure judgments. I was in one of those secret Kafka-esque courtrooms in Tampa yesterday..." I do not share Mr. Weidner's opinion as to how the foreclosure proceedings are being held in Hillsborough County, and I believe a reasonable analysis of the foreclosure process in place in the 13th-Thirteenth Judicial Circuit would show Mr. Weidner's statements to be rather exaggerated and misplaced.

I would note that in September a reporter from the New York Times visited the courthouse and wished to observe the foreclosure proceedings. The reporter was apparently advised by someone in the clerk's office that the proceedings were in the hearing room area and that entry into that area was controlled by the bailiffs. The reporter sought out our court administrator to discuss the issue of access. It was explained that access was not prohibited but that security screening procedures were in place. The reporter was allowed access to the hearing room, observed the proceedings, and conducted an interview with one of the judges. The reporter subsequently wrote an article which appeared in the New York Times. See Andrew Martin & David Streitfeld, *Flawed Foreclosure Documents Thwart Home Sales*, N.Y. TIMES, Oct. 8, 2010, at A1 (Flawed Foreclosure Documents Thwart Home Sales, By Andrew Martin and David Streitfeld, New York Times, October 8, 2010). No mention is made in that article of anyone not being allowed to observe foreclosure proceedings. Likewise, in October a reporter from Blumberg News visited our courthouse, observed foreclosure proceedings, interviewed a judge,

and wrote an article. See David McLaughlin, Florida's 30-Second Foreclosure Dash Hits Wall of Fraud Claims, BLOOMBERG NEWS, Oct. 13, 2010 (~~“Florida's 30-Second Foreclosure Dash Hits Wall of Fraud Claims, By David McLaughlin—Blumberg News, Oct 13, 2010~~). All with no apparent problems, and with no mention of having been denied access.

In any event, we are now in the process of developing a rotation schedule that will hopefully free up courtroom space starting Monday, November 22, 2010, so that all the foreclosure proceedings may be held in a traditional courtroom ~~that type of setting~~, rather than in a hearing room. As you know, we are struggling to handle an extraordinary amount of work with limited resources. We have put in place procedures which we feel are efficient and which allow for due process to all who have business before the court. We are of course always open to suggestions as to how to improve the system and would welcome an independent review of our process.

Please advise if there is any additional information you desire.

Nauman, Chris

From: Nauman, Chris
Sent: Thursday, October 28, 2010 2:26 PM
To: Nauman, Chris
Subject: FW: Foreclosure and Economic Recovery Non-recurring Funding FY 2010/11
Attachments: ForeclosureandEconomicRecovery_FundingPlans_Updated05212010.pdf; Foreclosure and Economic Recovery Responses from Circuits_May 2010_v2.pdf; 62% Estimated RPFM Backlog.pdf

ACLU PRR

From: Bridenback, Mike
Sent: Wednesday, June 16, 2010 7:05 AM
To: Nauman, Chris
Subject: FW: Foreclosure and Economic Recovery Non-recurring Funding FY 2010/11

This should help you.

From: Kristine Slayden [mailto:slaydenk@flcourts.org]
Sent: Friday, May 21, 2010 2:42 PM
To: Trial Court Chief Judges; Trial Court Administrators
Cc: Trial Court Budget Commission; Lisa Goodner; Charlotte Jerrett; Dorothy Wilson; Gary Phillips; Theresa Westerfield; Heather Thuotte-Pierson; Kristine Slayden; Sharon Bosley; Sharon Buckingham
Subject: Foreclosure and Economic Recovery Non-recurring Funding FY 2010/11

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

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

Issue 1: FY 2010/11 Funding Allocations Approved

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

Issue 2: Types of Cases and Disposition Goals Approved

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