



CHARLES A. FRANCIS
CHIEF JUDGE

OFFICE OF COURT ADMINISTRATION
SECOND JUDICIAL CIRCUIT OF FLORIDA
LEON COUNTY COURTHOUSE
ROOM 225-L
301 SOUTH MONROE STREET
TALLAHASSEE, FLORIDA 32301
(850) 577-4420 ◻ FAX (850) 487-7947

GRANT SLAYDEN
TRIAL COURT ADMINISTRATOR

November 23, 2010

Rachel Goodman
American Civil Liberties Union
125 Broad Street, 18th Floor
New York, New York 10024

Re: Response to Public Records Request

Dear Ms. Goodman,

I am responding on behalf of Chief Judge Charles A. Francis to satisfy your public records request dated October 19, 2010. I do wish to remind you that this request was not received by our court until October 27, 2010. Our response was somewhat delayed because of the extensive nature of your request, the size of our jurisdiction comprising numerous judges and staff spread over six counties, and the need to clarify which records you were specifically looking for. We also had to figure out how to transfer a large number of e-mails from a GroupWise format to a format readable by you. There is no charge for your public records request. Please contact me if you have questions or need additional information.

Respectfully submitted,

A handwritten signature in cursive script that reads "Grant Slayden".

Grant Slayden
Trial Court Administrator

GS/gs

**IN THE SECOND JUDICIAL CIRCUIT OF
FLORIDA**

OFFICE OF THE CHIEF JUDGE

ADMINISTRATIVE ORDER 2010 -05

**IN RE: CASE MANAGEMENT OF RESIDENTIAL FORECLOSURE CASES AND
MANDATORY REFERRAL OF MORTGAGE FORECLOSURE CASES INVOLVING
HOMESTEAD RESIDENCES TO MEDIATION**

WHEREAS, pursuant to Article V, section 2(d) of the Florida Constitution, and section 43.26, Florida Statutes, the chief judge of each judicial circuit is charged with the authority and power to do everything necessary to promote the prompt and efficient administration of justice, and rule 2.215(b)(3), Florida Rules of Judicial Administration, mandates the chief judge to "develop an administrative plan for the efficient and proper administration of all courts within the circuit;" and

WHEREAS, rule 2.545 of the Rules of Judicial Administration requires that the trial courts "...take charge of all cases at an early stage in the litigation and...control the progress of the case thereafter until the case is determined...", which includes "...identifying cases subject to alternative dispute resolution processes;" and

WHEREAS, Chapter 44, Florida Statutes, and rules 1.700-1.750, Florida Rules of Civil Procedure, provide a framework for court-ordered mediation of civil actions, except those matters expressly excluded by rule 1.710(b), which does not exclude residential mortgage foreclosure actions; and

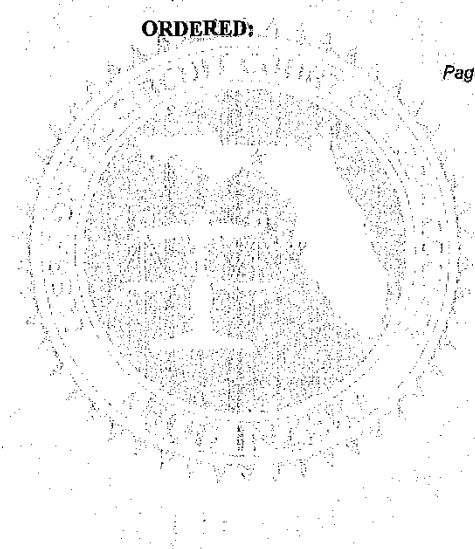
WHEREAS, the Supreme Court of Florida has determined that mandatory mediation of homestead residential mortgage foreclosure actions prior to the matter being set for final hearing will facilitate the laudable goals of meaningful participation in the process, communication, facilitation, problem-solving between the parties with the emphasis on self-determination, the parties' needs and interests, procedural flexibility, full disclosure, fairness, and confidentiality. Referring these cases to mediation will also facilitate and provide a more efficient use of limited judicial and clerk resources in a court system that is already overburdened; and

WHEREAS, The Tallahassee Bar Association, Inc. is an independent, nonpartisan, nonprofit organization that has demonstrable ability to assist the courts with managing the residential mortgage foreclosure actions that recently have been filed in the Second Judicial Circuit.

IT IS THEREFORE

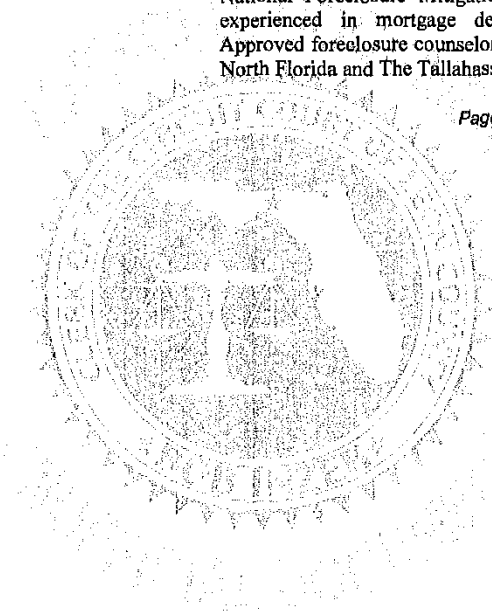
ORDERED:

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A. **Definitions:** As used in this Administrative Order, the following terms mean:

1. **"RMFM Program"** (stands for Residential Mortgage Foreclosure Mediation Program) means the mediation program managed by The Tallahassee Bar Association, Inc. to implement and carry out the intent of this Administrative Order.
2. **"The Program Manager"** means The Tallahassee Bar Association, Inc., qualified in accordance with parameters attached as Exhibit 13 hereto. "The Program Manager" is also referred to as the "Mediation Manager."
3. **"Plaintiff"** means the individual or entity filing to obtain a mortgage foreclosure on residential property.
4. **"Plaintiff's representative"** means the person who will appear at mediation who has full authority to settle without further consultation and resolve the foreclosure suit.
5. **"Borrower(s)"** means an individual(s) named as a party in the foreclosure action who is/are a primary obligor on the promissory note which is secured by the mortgage being foreclosed.
6. **"Homestead residence"** means a residential property for which a homestead real estate tax exemption was granted according to the certified rolls of the last assessment by the county property appraiser prior to the filing of the suit to foreclose the mortgage.
7. **"Forms"** means the forms contained in Exhibits 1, 2, 3, 4, 5(a)(b) and (c), 6, 7, 8, 9, and 10 all of which are attached hereto.
8. **"Form "A"** means the certifications required herein in the format of Exhibit 1 which is attached hereto.
9. **"Plaintiff's Disclosure for Mediation"** means those documents requested by the borrower pursuant to paragraph 7 below.
10. **"Borrower's Financial Disclosure for Mediation"** means those documents described in Exhibit 5 attached hereto.
11. **"Foreclosure counselor"** means a counselor trained in advising persons of options available when facing a mortgage foreclosure, who has no criminal history of committing a felony or a crime of dishonesty, and who is certified by the United States Department of Housing and Urban Development (HUD) or National Foreclosure Mitigation Counseling Program (NFMC) as an agency experienced in mortgage delinquency and default resolution counseling. Approved foreclosure counselors include but are not limited to Legal Services of North Florida and The Tallahassee Lender's Consortium.



12. **“Communication equipment”** means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other, provided that all conversation of the participants is audible to all persons present.

B. Scope

1. **Residential Mortgage Foreclosures [Origination Subject to Truth in Lending Act (TILA)]:**

This administrative order shall apply to all residential mortgage foreclosure actions filed in the Second Judicial Circuit in which the origination of the note and mortgage sued upon was subject to the provisions of the federal Truth in Lending Act, Regulation Z. However, compliance with this administrative order varies depending on whether the property secured by the mortgage is a homestead residence.

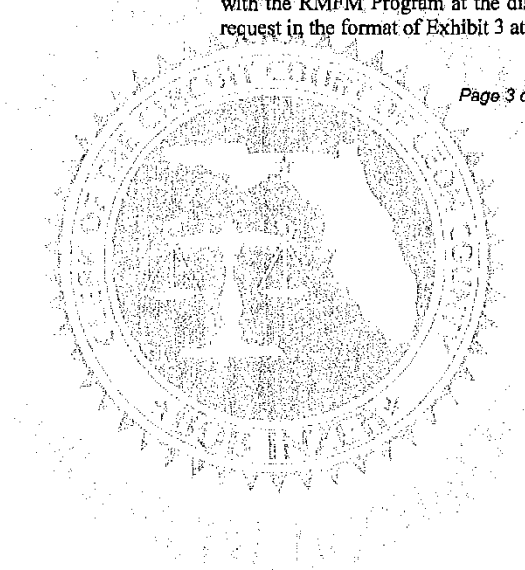
Upon the effective date of this administrative order, all newly filed mortgage foreclosure actions filed against a homestead residence shall be referred to the RMFM Program unless the plaintiff and borrower knowingly agree in writing otherwise or unless pre-suit mediation was conducted in accordance to paragraph F(1). The parties to the foreclosure action shall comply with the conditions and requirements imposed by this administrative order.

In actions to foreclose a mortgage on a homestead residence, the plaintiff and borrower shall attend at least one mediation session, unless the plaintiff and borrower knowingly agree in writing not to participate in the RMFM Program or the Program Manager files a notice of borrower nonparticipation.

The borrower must elect whether to participate in the RMFM program within ten (10) days after being contacted by the Program Manager. In the event this election is not filed within that ten (10) day period, it shall be presumed that the borrower does not wish to participate in the program.

Subsequent to June 1, 2010, all newly filed residential mortgage foreclosure actions involving property that are not a homestead residence shall comply with the requirements of filing a Form “A” as required by paragraph C1 below and the requirements of paragraph C13 below (plaintiff’s certification as to settlement authority).

At the discretion of the presiding judge, compliance with this administrative order may also be required for homestead residential mortgage foreclosure actions filed prior to the effective date of this administrative order, to residences that are not homestead residences, and any other residential foreclosure action the presiding judge deems appropriate. A party requesting that the case be sent to mediation with the RMFM Program at the discretion of the presiding judge shall make the request in the format of Exhibit 3 attached hereto.



2. Referral to Mediation.

This administrative order constitutes a formal referral to mediation pursuant to the Florida Rules of Civil Procedure in actions involving a mortgage foreclosure of a homestead residence. Additional orders of referral are not necessary; however, the presiding judge may execute additional orders of referral, in his or her discretion.

The plaintiff and borrower are deemed to have stipulated to mediation by a mediator assigned by the Program Manager unless pursuant to rule 1.720(f), Florida Rules of Civil Procedure, the plaintiff and borrower file a written stipulation, based upon a reasonable understanding of the impact of waiving mediation, choosing not to participate in the RMFM Program.

Referral to the RMFM Program is for administration and management of the mediation process and assignment of a Supreme Court of Florida certified circuit civil mediator who is a member in good standing of The Florida Bar, with extensive real estate experience in either litigation or mediation, who has been trained in mediating residential mortgage foreclosure actions, whose residence or the primary location of business is the Second Judicial Circuit of Florida, and who has agreed to be on the panel of available certified circuit civil mediators. Mediators used in the RMFM Program shall be trained in accordance with the standards stated in Exhibit 12 attached to AOSC09-54. Mediation through the RMFM Program shall be conducted in accordance with Florida Rules of Civil Procedure and Florida Rules for Certified and Court-Appointed Mediators.

3. Compliance Prior to Judgment.

The parties must comply with this Administrative Order and the mediation process must be completed before the plaintiff applies for default judgment, a summary judgment hearing, or a final hearing in an action to foreclose a mortgage on a homestead residence unless a notice of nonparticipation is filed by the Program Manager.

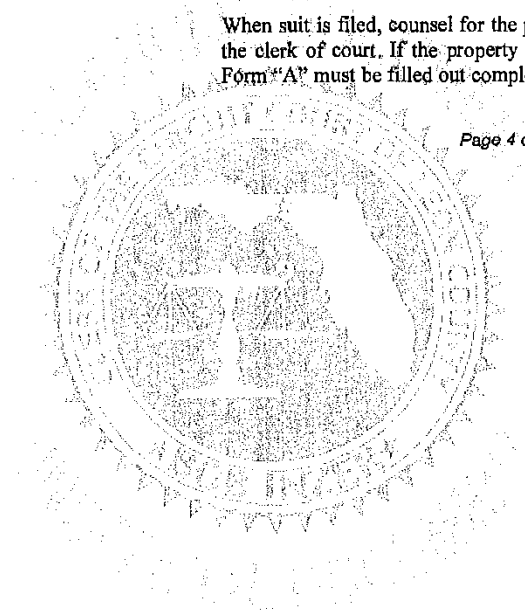
4. Delivery of Notice of RMFM Program with Summons.

After June 1, 2010, in all actions to foreclose a mortgage on residential property, the clerk of court shall attach to the summons to be served on each defendant a notice regarding managed mediation for homestead residences in the format of Exhibit 2 attached hereto.

C. Procedure

1. Responsibilities of Plaintiff's Counsel: Form "A".

When suit is filed, counsel for the plaintiff must file a completed Form "A" with the clerk of court. If the property is a homestead residence, all certifications in Form "A" must be filled out completely. Within one business day after Form "A"



is filed with the clerk of court, counsel for plaintiff shall also electronically transmit or otherwise deliver a copy of Form "A" to the Program Manager along with:

- a) the case number of the action;
- b) the contact information for all of the parties; (the contact information must include at a minimum the last known mailing address and phone number for each party);
- c) a check in the amount of \$675.00.
- d) a statement whether the property that is the subject matter of the foreclosure action is occupied by the borrower.

The clerks shall provide the Program Manager with access to the clerk's file in each residential mortgage foreclosure action which is the subject matter of this order.

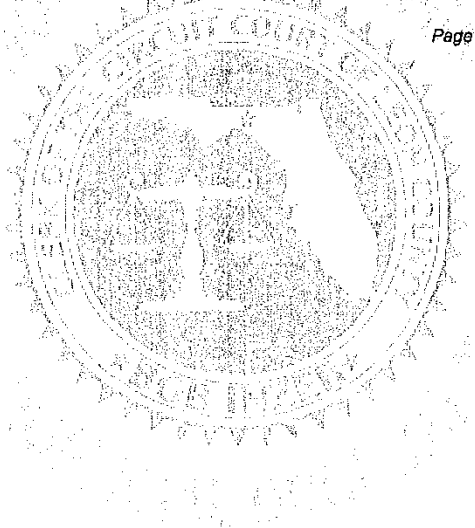
In Form "A", plaintiff's counsel must affirmatively certify whether the origination of the note and mortgage sued upon was subject to the provisions of the federal Truth in Lending Act, Regulation Z. In Form "A", plaintiff's counsel must also affirmatively certify whether the property is a homestead residence, and whether it is occupied by the borrower at the time the foreclosure action is filed. Plaintiff's counsel is not permitted to respond to the certification with "unknown," "unsure," "not applicable," or similar nonresponsive statements.

If the property is a homestead residence and if the case is not exempted from participation in the RMFM Program because of pre-suit mediation conducted in accordance with H1 below, plaintiff's counsel shall further certify in Form "A" the identity of the plaintiff's representative who will appear at mediation. Plaintiff's counsel may designate more than one plaintiff's representative. At least one of the plaintiff's representatives designated in Form "A" must attend any mediation session scheduled pursuant to this administrative order with full authority to sign any settlement agreement arising therefrom.

Form "A" may be amended to change the designated plaintiff's representative, and the amended Form "A" must be filed with the court no later than five (5) days prior to the mediation session. All amended Form "A's" must be electronically transmitted to the Program Manager via a secure dedicated e-mail address or on the web-enabled information platform described in paragraph 8 no later than one business day after being filed with the clerk of court.

2. Responsibilities of Borrower.

Within ten (10) days of the Program Manager receiving a copy of Form "A", the Program Manager shall begin efforts to contact the borrower to explain the RMFM Program to the borrower and the requirements that the borrower must



comply with to obtain a mediation. The Program Manager shall also ascertain whether the borrower wants to participate in the RMFM Program.

The borrower must do the following prior to mediation being scheduled: meet with an approved mortgage foreclosure counselor within thirty (30) days, and provide to the Program Manager the information required by the Borrower's Financial Disclosure for Mediation. The Borrower's Financial Disclosure for Mediation will depend on what option the borrower wants to pursue in trying to settle the action.

It shall be the responsibility of the Program Manager to transmit the Borrower's Financial Disclosure for Mediation via a secure dedicated e-mail address or to upload same to the web-enabled information platform described in paragraph C4 or to make actual delivery upon the parties; however, the Program Manager is not responsible or liable for the accuracy of the borrower's financial information.

3. Plaintiff's Disclosure for Mediation.

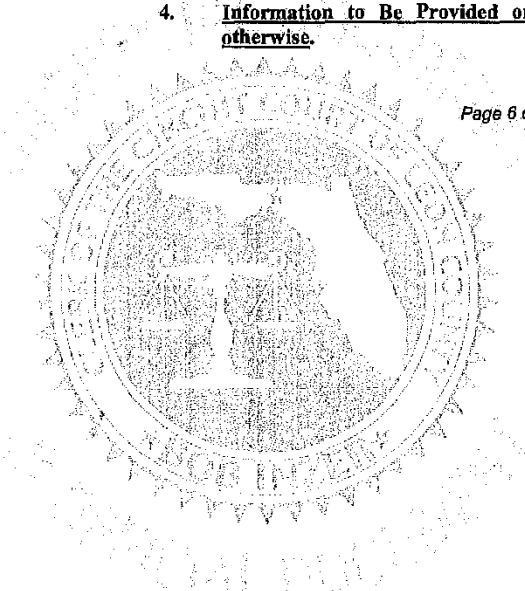
Within the time limit stated below, prior to attending mediation the borrower may request any of the following information and documents from the plaintiff:

- a) Documentary evidence the plaintiff is the owner and holder in due course of the note and mortgage sued upon.
- b) A history showing the application of all payments by the borrower during the life of the loan.
- c) A statement of the plaintiff's position on the present net value of the mortgage loan.
- d) The most current appraisal of the property available to the plaintiff.

The borrower must deliver a written request for such information to the Program Manager in the format of Exhibit 6 attached hereto. Not later than fifteen (15) days prior to the mediation session. The Program Manager shall promptly electronically or otherwise transmit the request for information to plaintiff's counsel.

Plaintiff's counsel is responsible for ensuring that the Plaintiff's Disclosure for Mediation is electronically transmitted via a secure dedicated e-mail address or to the web-enabled information platform described in paragraph C4 below or otherwise transmitted no later than five (5) business days before the mediation session. The Program Manager shall immediately deliver a copy of Plaintiff's Disclosure for Mediation to the borrower.

4. Information to Be Provided on Web-Enabled Information Platform or otherwise.



All information to be provided to the Program Manager to advance the mediation process, such as Form "A", Borrower's Financial Disclosure for Mediation, Plaintiff's Disclosure for Mediation, as well as the case number of the action and contact information for the parties, shall be submitted via a secure dedicated e-mail address or in a web-enabled information platform with XML data elements, or by actual delivery upon the parties.

5. **Nonparticipation by Borrower.**

If the borrower has meaningfully decided that he or she does not want participate in the RMFM Program, or if the borrower fails or refuses to cooperate with the Program Manager, or if the Program Manager is unable to contact the borrower, the Program Manager shall file a notice of nonparticipation in the format of Exhibit 4 attached. The notice of nonparticipation shall be filed no later than sixty (60) days after the initial copy of Form "A" is filed with the court. A copy of the notice of nonparticipation shall be served on the parties by the Program Manager.

6. **Referral to Foreclosure Counseling.**

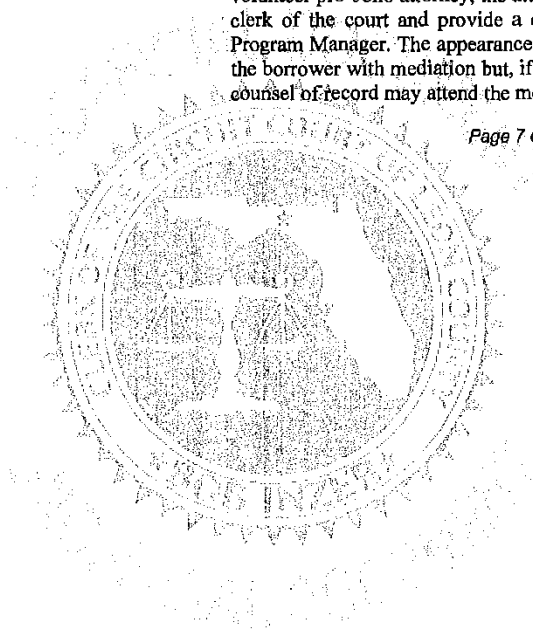
The Program Manager shall be responsible for referring the borrower to a foreclosure counselor prior to scheduling mediation. Selection from a list of foreclosure counselors certified by the United States Department of Housing and Urban Development shall be by rotation or by such other procedures as may be adopted by the Program Manager. The borrower's failure to participate in foreclosure counseling shall be cause for terminating the case from the RMFM Program.

Legal Aid of North Florida and the Tallahassee Lender's Consortium shall be qualified foreclosure counselors under the terms of this order. Nothing herein precludes the Program Manager from utilizing other qualified foreclosure counselors.

7. **Referrals for Legal Representation.**

In actions referred to the RMFM Program, the Program Manager shall advise any borrower who is not represented by an attorney that the borrower has a right to consult with an attorney at any time during the mediation process and the right to bring an attorney to the mediation session.

The Program Manager shall also advise the borrower that the borrower may apply for a volunteer pro bono attorney in programs run by lawyer referral, legal services, and legal aid programs as may exist within the circuit. If the borrower applies to one of those agencies and is coupled with a legal services attorney or a volunteer pro bono attorney, the attorney shall file a notice of appearance with the clerk of the court and provide a copy to the attorney for the plaintiff and the Program Manager. The appearance may be limited to representation only to assist the borrower with mediation but, if a borrower secures the services of an attorney, counsel of record may attend the mediation.



At the discretion of the mediator and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.

8. Scheduling Mediation.

The plaintiff's representative, plaintiff's counsel, and the borrower are all required to comply with the time limitations imposed by this administrative order and attend a mediation session as scheduled by the Program Manager. No earlier than thirty (30) days and no later than sixty (60) days after suit is filed, the Program Manager shall schedule a mediation session.

The mediation session shall be scheduled for a date and time convenient to the plaintiff's representative, the borrower, and counsel for the plaintiff and the borrower, using a mediator from the panel comprised of mediators with the qualifications set forth in Paragraph B2 above. Mediation sessions will be held at a suitable location(s) within the circuit. It shall be the responsibility of the Program Manager to provide facilities for the mediation. Mediation shall be completed within the time requirements established by rule 1.710(a), Florida Rules of Civil Procedure.

Mediation shall not be scheduled until the borrower has had an opportunity to meet with an approved foreclosure counselor. Mediation shall not be scheduled earlier than ten (10) days after the Borrower's Financial Disclosure for Mediation has been transmitted to the plaintiff via a secure dedicated e-mail address or uploaded to the web-enabled information platform described in paragraph C4, or otherwise delivered.

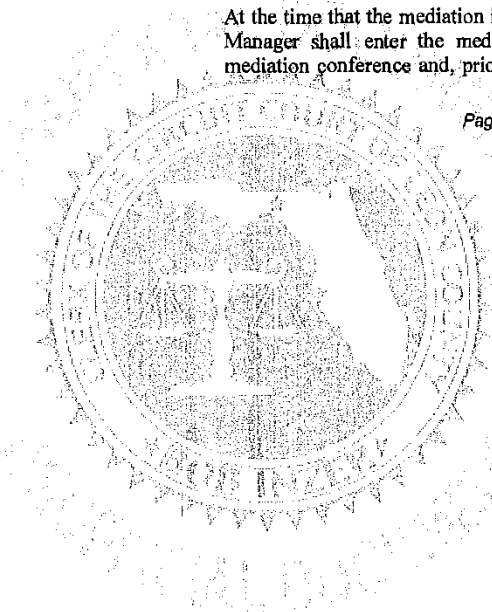
Once the date, time, and place of the mediation session have been scheduled by the Program Manager, the Program Manager shall promptly file with the clerk of court and serve on all parties a notice of the mediation session.

9. Attendance at Mediation.

Except as provided herein, the following persons are required to be physically present at the mediation session:

- a) a plaintiff's representative designated in the most recently filed Form "A";
- b) plaintiff's counsel;
- c) the borrower(s);
- d) and the borrower's counsel of record, if any.

At the time that the mediation is scheduled to physically commence, the Program Manager shall enter the mediation room prior to the commencement of the mediation conference and, prior to any discussion of the case in the presence of



the mediator, take a written roll. That written roll will consist of a determination of the presence of the borrower; the borrower's counsel of record, if any; the plaintiff's lawyer; and the plaintiff's representative with full authority to settle.

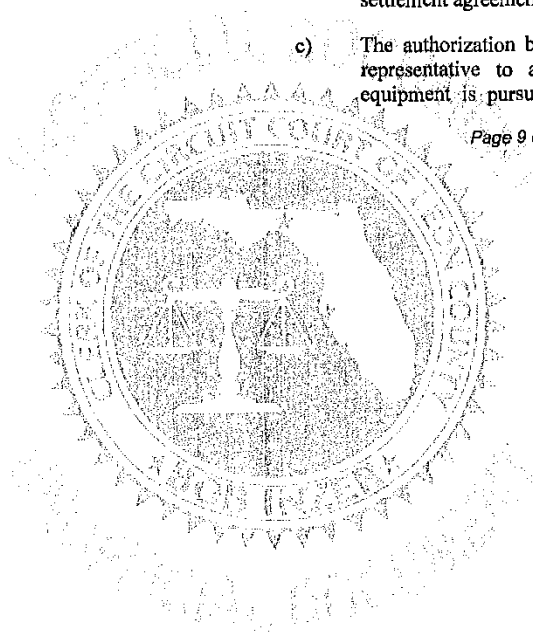
If the Program Manager determines that anyone is not present, that party shall be reported by the Program Manager as a non-appearance by that party on the written roll. If the Program Manager determines that the plaintiff's representative present does not have full authority to settle, the Program Manager shall report that the plaintiff's representative did not appear on the written roll as a representative with full settlement authority as required by this administrative order. The written roll and communication of authority to the Program Manager is not a mediation communication. The mediator may not report lack of full settlement authority if that information is obtained by a mediation communication.

Junior lienholders may appear at mediation by a representative with full settlement authority. If a junior lienholder is a governmental entity comprised of an elected body, such junior lienholder may appear at mediation by a representative who has authority to recommend settlement to the governing body. Counsel for any junior lienholder may also attend the mediation.

The participants physically attending mediation may consult on the telephone during the mediation with other persons as long as such consultation does not violate the provisions of sections 44.401-406, Florida Statutes.

10. Attendance at Mediation through the use of Communication Equipment:

- a) The plaintiff's representative may appear at mediation through the use of communication equipment, if plaintiff files and serves at least five (5) days prior to the mediation a notice in the format of Exhibit 7 attached hereto, advising that the plaintiff's representative will be attending through the use of communication equipment and designating the person who has full authority to sign any settlement agreement reached.
- b) Plaintiff's counsel may be designated as the person with full authority to sign the settlement agreement, however this does not satisfy the requirement that plaintiff's representative be present as previously provided herein, nor shall it excuse the personal attendance of plaintiff's counsel at all mediations, even if they are not designated as the person with full authority to sign the settlement agreement.
- c) The authorization by this administrative order for the plaintiff's representative to appear through the use of communication equipment is pursuant to rule 1.720(b), Florida Rules of Civil

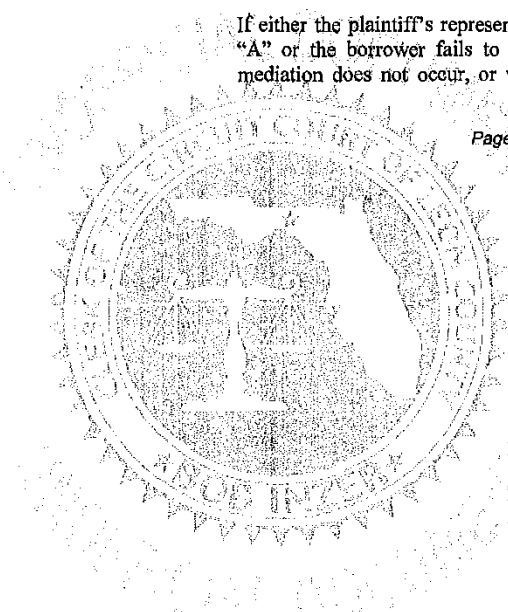


Procedure (court order may alter physical appearance requirement), and in recognition of the emergency situation created by the number of residential foreclosure cases being filed in this circuit and the impracticality of requiring physical attendance of a plaintiff's representative at every mediation. Additional reasons for authorizing appearance through the use of communication equipment for mortgage foreclosure mediation include a number of protective factors that do not exist in other civil cases, namely the administration of the program by a Program Manager, pre-mediation counseling for the borrower, and required disclosure of information prior to mediation. The implementation of this administrative order shall not create any expectation that appearance through the use of communication equipment will be authorized in other civil cases.

- d) If the plaintiff's representative attends mediation through the use of communication equipment:
 - i. The person authorized by the plaintiff to sign a settlement agreement must be physically present at mediation.
 - ii. If the plaintiff's representative attends mediation through the use of communication equipment, the plaintiff's representative must remain on the communication equipment at all times during the entire mediation session.
 - iii. If the plaintiff's representative attends through the use of communication equipment, and if the mediation results in an impasse, within five (5) days after the mediation session, the plaintiff's representative shall file in the court file a certification in the format of Exhibit 8 attached hereto as to whether the plaintiff's representative attended mediation.
 - iv. If the mediation results in an impasse after the appearance of the plaintiff's representative through the use of communication equipment, the failure to timely file the certification regarding attendance through the use of communication equipment shall be grounds to impose sanctions against the plaintiff, including requiring the physical appearance of the plaintiff's representative at a second mediation, taxation of the costs of a second mediation to the plaintiff, or dismissal of the action.

11. Failure to Appear at Mediation.

If either the plaintiff's representative designated in the most recently filed Form "A" or the borrower fails to appear at a properly noticed mediation and the mediation does not occur, or when a mediation results in an impasse, and the



determination that a party has not appeared was not learned through a mediation communication, the report of the mediator shall notify the presiding judge regarding who appeared at mediation without making further comment as to the reasons for an impasse.

If the borrower fails to appear, or if the mediation results in an impasse with all required parties present, and if the borrower has been lawfully served with a copy of the complaint, and if the time for filing a responsive pleading has passed, the matter may proceed to a final hearing, summary judgment, or default final judgment in accordance with the rules of civil procedure without any further requirement to attend mediation. If the borrower or borrower's counsel of record fails to appear, the court may impose such other sanctions as the court deems appropriate, including, but not limited to, attorney's fees and costs.

If plaintiff's counsel or the plaintiff's representative fails to appear, the court may dismiss the action without prejudice, order plaintiff's counsel or the plaintiff's representative's to appear at mediation, or impose such other sanctions as the court deems appropriate including, but not limited to, attorney's fees and costs if the borrower is represented by an attorney.

12. Written Settlement Agreement; Mediation Report.

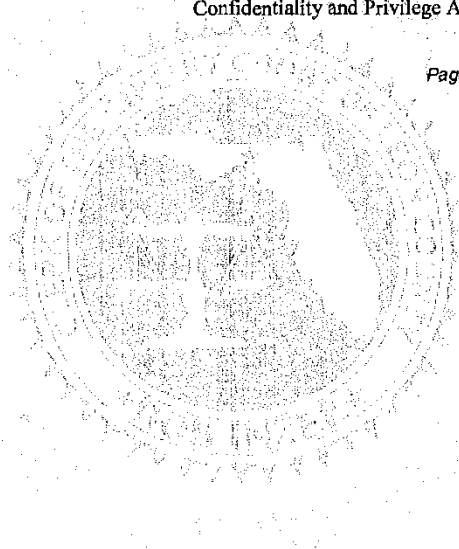
If a partial or final agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. Pursuant to rule 1.730(b), Florida Rules of Civil Procedure, if a partial or full settlement agreement is reached, the mediator shall report the existence of the signed or transcribed agreement to the court without comment within ten (10) days after completion of the mediation.

If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the court without comment or recommendation.

In the case of an impasse, the report shall advise the court who attended the mediation, and a copy of Form "A" or any amended Form "A" shall be attached to the report for the court to determine if at least one of the plaintiff's representative named in Form "A" appeared for mediation. The mediator's report to the court shall be in the format of Exhibit 9 attached hereto.

12. Mediation Communications.

All mediation communications occurring as a result of this administrative order, including information provided to the Program Manager that is not filed with the court, shall be confidential and inadmissible in any subsequent legal proceeding pursuant to Chapter 44, Florida Statutes, the Florida Rules of Civil Procedure, and the Florida Rules for Certified and Court-Appointed Mediators, unless otherwise provided for by law. The provisions of chapter 44.401-44.406, The Mediation Confidentiality and Privilege Act, specifically apply to the Program Manager.



13. Failure to Comply with Administrative Order.

In all residential foreclosure actions, if a notice for trial, motion for default final judgment, or motion for summary judgment is filed with the clerk of court, no action will be taken by the court to set a final hearing or enter a summary or default final judgment until the requirements of this administrative order have been met.

In cases involving a homestead residence, the presiding judge shall require that copies of either: (1) the most recently filed Form "A" and the report of the mediator; or, (2) the most recently filed Form "A" and the notice of borrower's nonparticipation be sent to the presiding judge by the plaintiff or plaintiff's counsel prior to setting a final hearing or delivered with the packet requesting a summary or default final judgment.

The failure of a party to fully comply with the provisions of this administrative order may result in the imposition of any sanctions available to the court, including dismissal of the cause of action without further notice.

14. Mediation Not Required If Residence Is Not Homestead.

If the plaintiff certifies in Form "A" that the property is **NOT** a homestead residence when suit is filed, plaintiff's counsel must file and serve with the complaint a certification identifying the agent of plaintiff who has full authority to settle the case without further consultation. The certification shall be in the form of Exhibit 10 attached hereto.

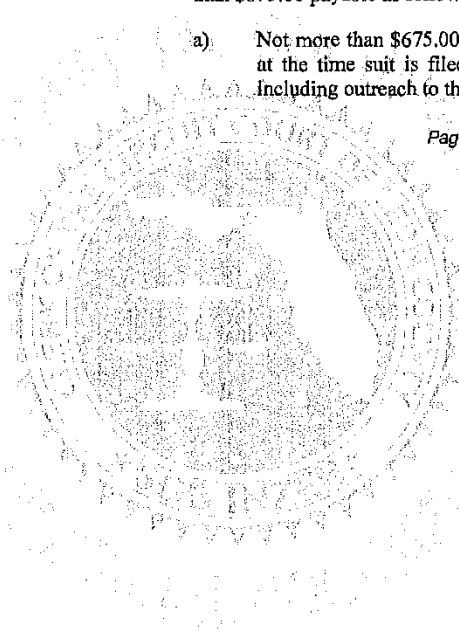
If the plaintiff certifies in Form "A" that the property is **NOT** a homestead residence, the matter may proceed to a final hearing, summary judgment, or default final judgment in accordance with the rules of civil procedure without any further requirement to attend mediation, unless otherwise ordered by the presiding judge.

D. RMFM Program Fees

1. Fee Structure:

The fee structure for the RMFM Program is based on the assumption that a successful mediation can be accomplished with one mediation session. Accordingly, pursuant to rule 1.720(g), Florida Rules of Civil Procedure, the reasonable program fees for the managed mediation, including foreclosure counseling, costs for facilities in which to conduct the mediations, the mediator's fee, and administration of the managed mediation program, is a total of no more than \$675.00 payable as follows:

- a) Not more than \$675.00 paid by plaintiff directly to the Program Manager at the time suit is filed for administrative fees of the RMFM Program, including outreach to the borrower and foreclosure counseling fees.



2. **Additional Mediation Sessions.**

If more than one mediation session is needed, the total program fee stated above will also cover a second mediation session. However, if an additional mediation session is needed after the second session, the plaintiff shall be responsible for the payment of the program fees for such additional mediation sessions, unless the parties agree otherwise. The program fees for the third and each subsequent mediation session shall be no more than \$250.00 per session.

3. **Payments.** All program fees shall be paid directly to the Program Manager. If the case is not resolved through the mediation process, the presiding judge may tax the program fees as a cost or apply it as a set off in the final judgment of foreclosure.

4. **Refunds.**

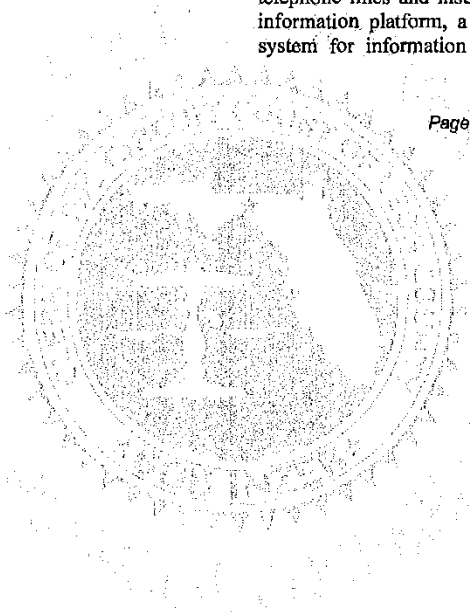
a) If the borrower cannot be located, chooses not to participate in the RMFM Program, or if the borrower does not make any contact with the foreclosure counselor, the plaintiff shall be entitled to a refund of the portion of the program fees attributable to foreclosure counseling, to wit \$75.00, and the mediators fee, to wit: \$250.00, for a total of \$325.00.

b) If mediation is scheduled and the borrower announces an intention not to participate further in the RMFM Program prior to the mediation session, or if the case settles and the Program Manager has notice of the settlement at least five (5) days prior to the mediation session, the plaintiff shall be entitled to a refund of the program fees allocated for the mediation session, to wit \$250.00.

c) If notice of settlement is not received by the Program Manager at least five (5) days prior to the scheduled mediation session, the plaintiff shall not be entitled to any refund of mediation fees.

5. **Costs included in Fees.** The total fees include:

- a) The mediator's fees and costs;
- b) The cost for the borrower to attend a foreclosure counseling session with an approved mortgage foreclosure counselor;
- c) The costs of an interpreter, if any; and,
- d) The cost to the Program Manager for administration of the managed mediation program which includes but is not limited to, scheduling, telephone lines and instruments, infrastructure to support a web-enabled information platform, a secure dedicated email address or other secure system for information transmittal, the cost of facilities in which the



mediations shall be conducted, and other related expenses incurred in managing the foreclosure mediation program.

E. Program Manager to Monitor Compliance and Satisfaction

1. Monitoring Compliance Concerning Certain Provisions of this Administrative Order.

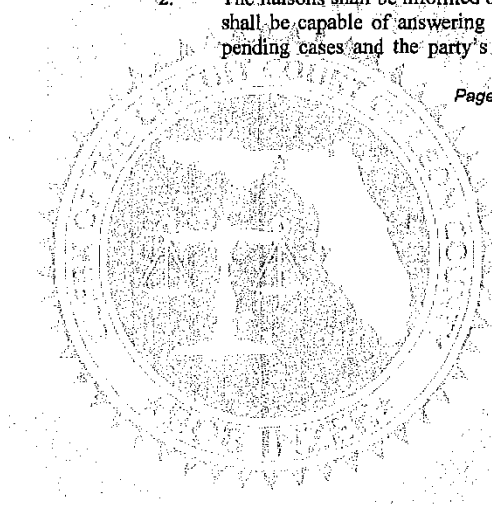
- a) The Program Manager shall be responsible for monitoring whether Form "A" has been filed in all residential foreclosure actions that commence after June 1, 2010 and whether the RMFM Program fees have been paid if the residence is a homestead residence.
- b) The Program Manager shall send compliance reports to the chief judge or the chief judge's designee in the format and with the frequency required by the chief judge.
- c) The Program Manager may assist with enforcing compliance with this administrative order upon filing a written motion pursuant to rule 1.100(b), Florida Rules of Civil Procedure, stating with particularity the grounds therefor and the relief or order sought. Example orders are attached as Exhibit 11 attached hereto.

2. Satisfaction with RMFM Program and Program Operation Reports.

The Program Manager shall also provide the chief judge with periodic reports as to whether plaintiffs and borrowers are satisfied with the RMFM Program. This information shall be obtained by a procedure within the discretion of the Program Manager. The Program Manager shall also provide the chief judge with reports with statistical information about the status of cases in the RMFM Program and RMFM Program finances in the format and with the frequency required by the chief judge.

F. Designation of Plaintiff Liaisons with RMFM Program.

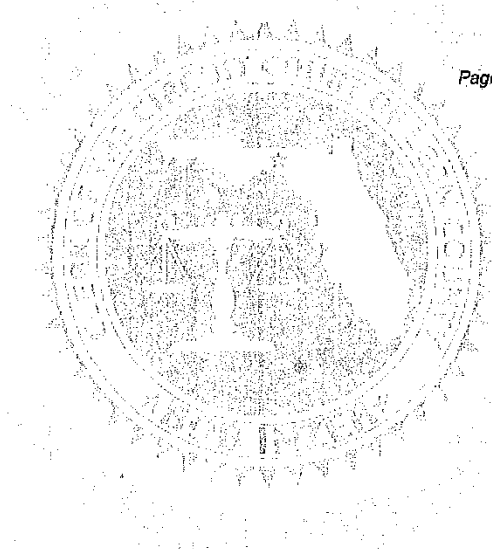
- 1. Any plaintiff who has filed five (5) or more foreclosure actions in the Second Judicial Circuit while this Administrative Order is in effect shall appoint two RMFM Program liaisons, one of whom shall be a lawyer and the other a representative of the entity servicing the plaintiff's mortgages, if any, and, if none, a representative of the plaintiff. Plaintiff's counsel shall provide written notice of the name, phone number (including extension), email, and mailing address of both liaisons to the chief judge and the Program Manager within 30 days after the effective date of this administrative order, and on the first Monday of each February thereafter while this administrative order is in effect.
- 2. The liaisons shall be informed of the requirements of this administrative order and shall be capable of answering questions concerning the administrative status of pending cases and the party's internal procedures relating to the processing of



foreclosure cases, and be readily accessible to discuss administrative and logistical issues affecting the progress of the plaintiff's cases through the RMFM Program. Plaintiff's counsel shall promptly inform the chief judge and Program Manager of any changes in designation of the liaisons and the contact information of the liaisons. The liaisons shall act as the court's point of contact in the event the plaintiff fails to comply with this administrative order on multiple occasions and there is a need to communicate with the plaintiff concerning administrative matters of mutual interest.

G. List of Participating Mediators and Rotation of Mediators.

1. The Program Manager shall post on its website the list of Supreme Court of Florida certified mediators it will use to implement the RMFM Program. The mediators to be utilized may either be individuals or law firms. In the event a law firm is appointed, it shall select a mediator who is qualified under the terms of this order to be the mediator of the cases that firm receives in the rotation. The criteria to be used in selecting mediators shall be those criteria set forth in Paragraph C2, along with experience, education, training, merit, availability, and diversity. The selections shall be at the discretion of the Program Manager.
2. The Program Manager shall also state in writing the procedure, subject to the approval by the chief judge, the program will use to rotate the appointment of mediators. If a law firm is appointed, it shall be construed to satisfy the rotation requirement for all members of the firm. The RMFM Program shall encourage the use of Supreme Court civil circuit certified mediators who have been specially trained in the manner set forth in Exhibit 12 attached to AOSC09-54 and is incorporated by reference herein, and made a part hereof.
3. The list presenters of training programs specifically qualified to conduct such trainings in the Second Judicial Circuit of Florida, include, but are not limited to: Christopher Shulman, Esq., Gregory Firestone, PhD, and David A. Wolfson, Esq. Other training providers who desire that their programs qualify under Exhibit 12 attached to AOSC09-54 and are incorporated by reference herein and made a part hereof shall submit an application to the Program Manager along with their program materials for determination as to whether the program qualifies under the provisions of Exhibit 12.
4. Individuals qualified to mediate mortgage foreclosure cases, shall be members in good standing of The Florida Bar, whose residence or principle place of business, is the Second Judicial Circuit of Florida, who have extensive real estate experience in litigation or mediation, and who reflect the diversity of the community in which it operates. Assignment of mediators shall be on a rotation basis that fairly spreads work throughout the pool of mediators working in the RMFM Program, unless the parties mutually agree on a specific mediator or the case requires a particular skill on the part of the mediator.



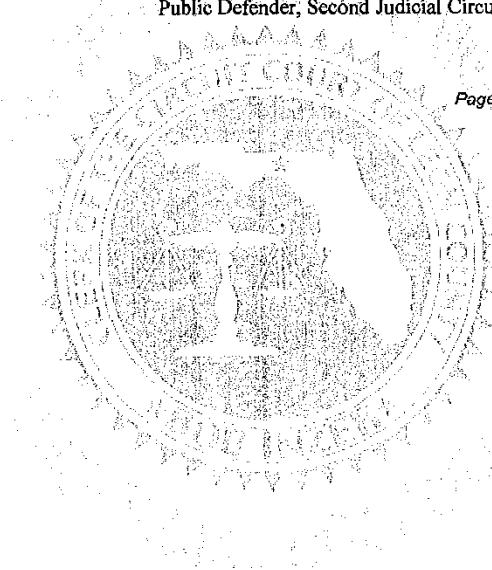
H. Pre-Suit Mediation Encouraged

1. Mortgage lenders, whether private individuals, commercial institutions, or mortgage servicing companies, are encouraged to use any form of alternative dispute resolution, including mediation, *before* filing a mortgage foreclosure lawsuit with the clerk of the court. Lenders are encouraged to enter into the mediation process with their borrowers *prior* to filing foreclosure actions in the Second Judicial Circuit to reduce the costs to the parties for maintaining the litigation and to reduce to the greatest extent possible the stress on the limited resources of the courts caused by the large numbers of such actions being filed across the state and, in particular, in the Second Judicial Circuit.
2. If the parties participated in pre-suit mediation using the RMFM Program or participated in any other pre-suit mediation program having procedures substantially complying with the requirements of this administrative order, including provisions authorizing the exchange of information, foreclosure counseling, and requiring use of Supreme Court of Florida certified circuit civil mediators specially trained to mediate residential mortgage foreclosure actions, the plaintiff shall so certify in Form "A", in which case the plaintiff and borrower shall not be required to participate in mediation again unless ordered to do so by the presiding judge. A borrower may file a motion contesting whether pre-suit mediation occurred in substantial compliance with the RMFM Program.
3. Nothing in this paragraph precludes the presiding judge from sending the case to mediation after suit is filed, even if pre-suit mediation resulted in an impasse or there was a breach of the pre-suit mediation agreement. This administrative order shall be recorded by the clerk of the court in each county of the Second Judicial Circuit, takes effect on June 1, 2010, and will remain in full force and effect unless and until otherwise ordered.

DONE and ORDERED this 19th day of May, 2010.


CHARLES A. FRANCIS
Chief Judge

cc: All Circuit and County Judges, Second Judicial Circuit
All Clerks of the Circuit Court, Second Judicial Circuit
State Attorney, Second Judicial Circuit
Public Defender, Second Judicial Circuit

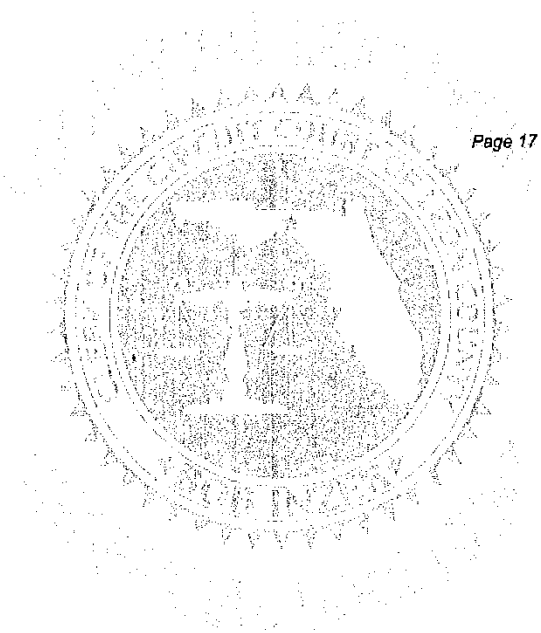


SECOND JUDICIAL CIRCUIT

EXHIBIT 1

FORM "A"

Page 17 of 59



**Please complete online at <http://www.tallahasseebar.org>
and file original with the Clerk of Court**

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

[Name of Plaintiff]

Plaintiff(s),
Vs.

Civil Case No.: _____

[Names of Defendant(s)]

Defendant(s)

Form "A"

(Certifications Pursuant to Second Judicial Circuit Administrative Order 2010-05.)

Certificate of Plaintiff's Counsel Regarding Origination of Note and Mortgage

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court,
certifies the origination of the note and mortgage sued upon in this action

___ WAS or
___ WAS NOT

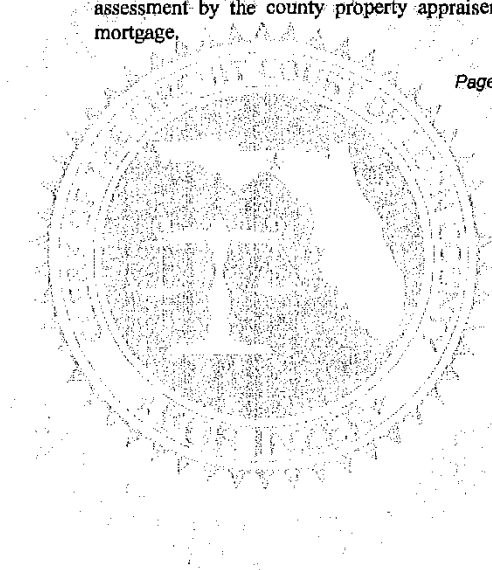
subject to the provisions of the federal Truth in Lending Act, Regulation Z.

Certificate of Plaintiff's Counsel Regarding Status of Residential Property

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court,
certifies the property that is the subject matter of this lawsuit

___ IS or
___ IS NOT

a homestead residence. A "homestead residence" means a residential property for which a
homestead real estate tax exemption was granted according to the certified rolls of the last
assessment by the county property appraiser prior to the filing of the suit to foreclose the
mortgage.



If the residential property is a homestead residence, complete both of the following:

Certificate of Plaintiff's Counsel Regarding Pre-Suit Mediation

The following certification

DOES or
 DOES NOT

apply to this case:

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court, certifies that prior to filing suit a plaintiff's representative with full settlement authority attended and participated in mediation with the borrower, conducted by:

Name of Pre-suit mediator: _____

Telephone: _____

Email: _____

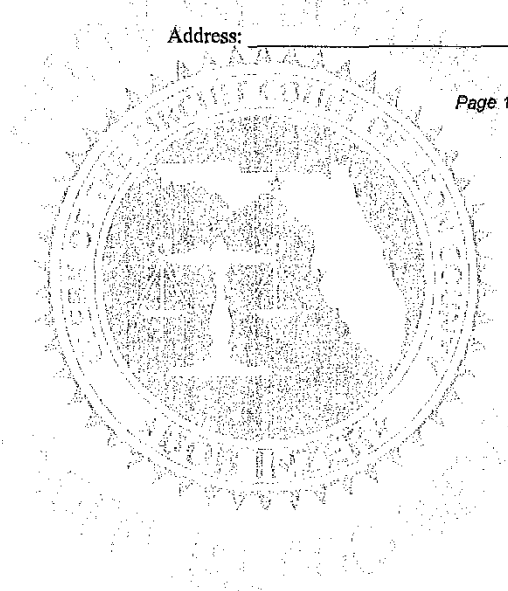
and the mediation resulted in an impasse or a pre-suit settlement agreement was reached but the settlement agreement has been breached. The undersigned further certifies that prior to mediation the borrower received services from a HUD or NFMCA approved foreclosure counselor, Borrower's Financial Disclosure for Mediation was provided, and Plaintiff's Disclosure for Mediation was provided.

Certificate of Plaintiff's Counsel Regarding Plaintiff's Representative at Mediation

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court, certifies the following is a list of the persons, one of whom will represent the plaintiff in mediation with full authority to modify the existing loan and mortgage and to settle the foreclosure case, and with authority to sign a settlement agreement on behalf of the plaintiff

Name of Plaintiff's Representative who has full settlement authority: _____

Address: _____



Telephone: _____

Facsimile No.: _____

Email: _____

Plaintiff's counsel understands the mediator or the RMFM Program Manager may report to the court who appears at mediation and, if at least one of plaintiff's representatives named above does not appear at mediation, sanctions may be imposed by the court for failure to appear. As required by the Administrative Order, plaintiff's counsel will transmit electronically to the RMFM Program Manager the case number of this action, the contact information regarding the parties, and a copy of this Form A, using the approved web-enable information platform.

Date: _____

Signature Plaintiff's

Counsel: _____

Printed Name: _____

Fla. Bar Number: _____

Address: _____

Telephone Number: _____

Facsimile Number: _____

Email: _____

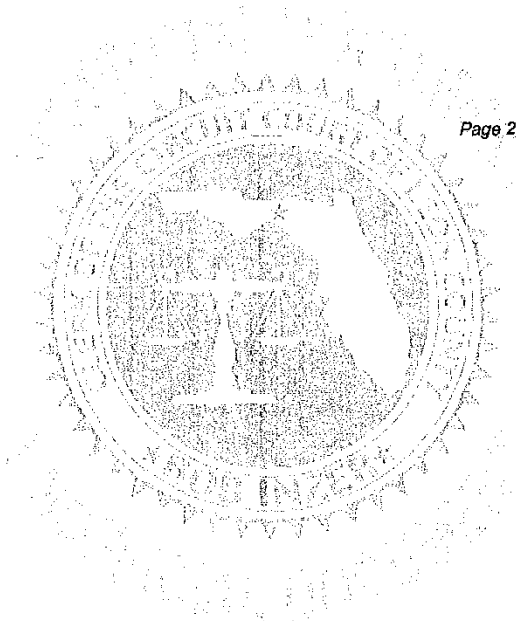
Certificate of Borrower's Last Known Address and Occupancy

Borrower Name: _____

Last Known Mailing Address: _____

Is this residence occupied by the Borrower? _____ Yes

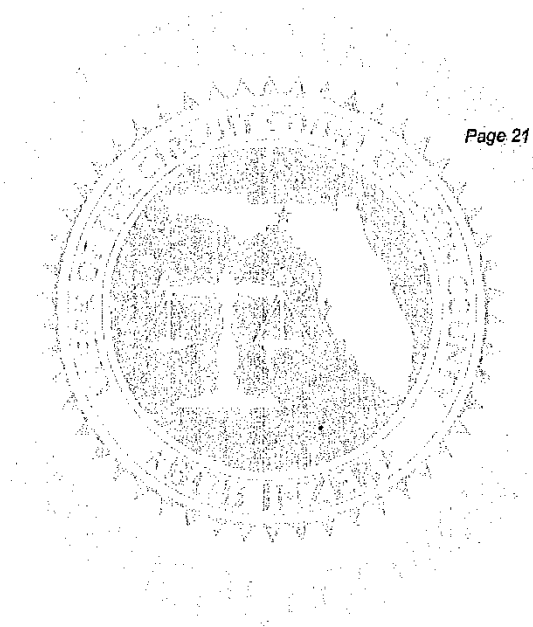
An answer of "unknown," "not sure," "not applicable," or other like response will not be accepted. _____ No



SECOND JUDICIAL CIRCUIT

EXHIBIT 2

NOTICE OF RMFM PROGRAM TO BE SERVED WITH SUMMONS



IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

**A NOTICE FROM THE COURT
REGARDING LAWSUITS TO FORECLOSE MORTGAGES ON HOMES**

If you are being sued to foreclose the mortgage on your primary home and your home has a homestead exemption and if you are the person who borrowed the money for the mortgage, you have a right to go to "mediation." At "mediation," you will meet with a Florida Supreme Court Certified Mediator, appointed by the Court, and also a representative of the company asking to foreclose your mortgage to see if you and the company suing you can work out an agreement to stop the foreclosure.

The mediator will not be allowed to give you legal advice or to give you an opinion about the lawsuit. The mediator's job is to remain neutral and not take sides, but to give both sides a chance to talk to each other to see if an agreement can be reached to stop the foreclosure. If you and the company suing you come to an agreement, a settlement agreement will be written up and signed by you and the company suing you. With some limited exceptions, what each side says at the mediation is confidential and the judge will not know what is said at mediation.

You will not have to pay anything to participate in this mediation program. To participate in the mediation, as soon as practical, you must contact the Tallahassee Bar Association, Inc., by calling (850) 222-3292 (extension 304) Monday through Thursday 9:00 a.m. to 5:00 p.m. and Friday 9:00 a.m. to 2:00 p.m. Tallahassee Bar Association, Inc., will explain more about the mediation program to you when you call.

To participate in mediation, you must also provide financial information to the mediator and meet with an approved foreclosure counselor prior to mediation. You will not be charged any additional amount for meeting with a foreclosure counselor. You may also request certain information from the company suing you before going to mediation.

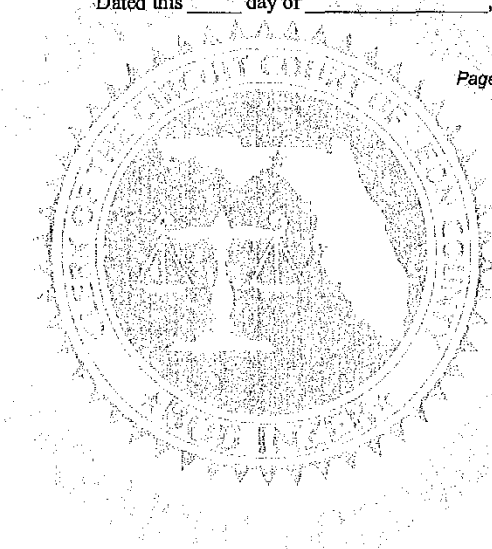
If you have attended mediation arranged by Tallahassee Bar Association, Inc., prior to being served with this lawsuit, and if mediation did not result in a settlement, you may file a motion asking the court to send the case to mediation again if your financial circumstances have changed since the first mediation.

AS STATED IN THE SUMMONS SERVED ON YOU:

- **YOU OR YOUR LAWYER MUST FILE A WRITTEN RESPONSE TO THE COMPLAINT TO FORECLOSE THE MORTGAGE WITH THE COURT WITHIN 20 DAYS AFTER YOU WERE SERVED WITH THE COMPLAINT.**
- **YOU OR YOUR LAWYER MUST ALSO SEND A COPY OF YOUR WRITTEN RESPONSE TO THE PLAINTIFF'S ATTORNEY.**
- **YOU MUST TIMELY FILE A WRITTEN RESPONSE TO THE COMPLAINT EVEN IF YOU DECIDE TO PARTICIPATE IN THE MEDIATION.**

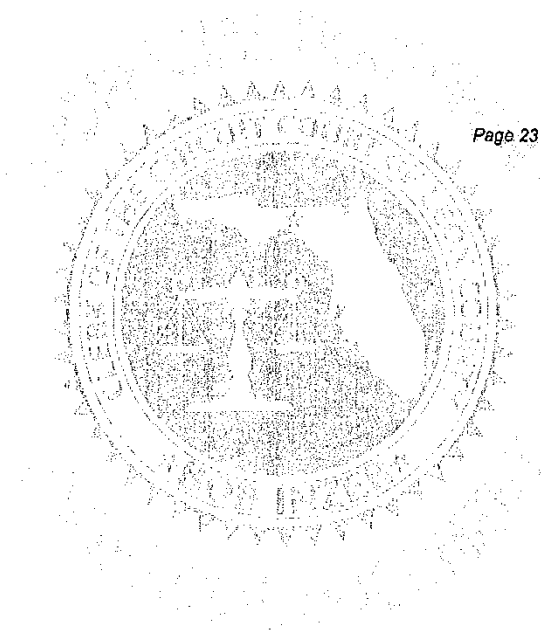
Dated this _____ day of _____, 2010.

Charles A. Francis, CHIEF JUDGE



**SECOND JUDICIAL CIRCUIT
EXHIBIT 3**

BORROWER'S REQUEST TO PARTICIPATE IN RMFM PROGRAM



IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Plaintiff(s)

Vs.

Civil Case No.: _____

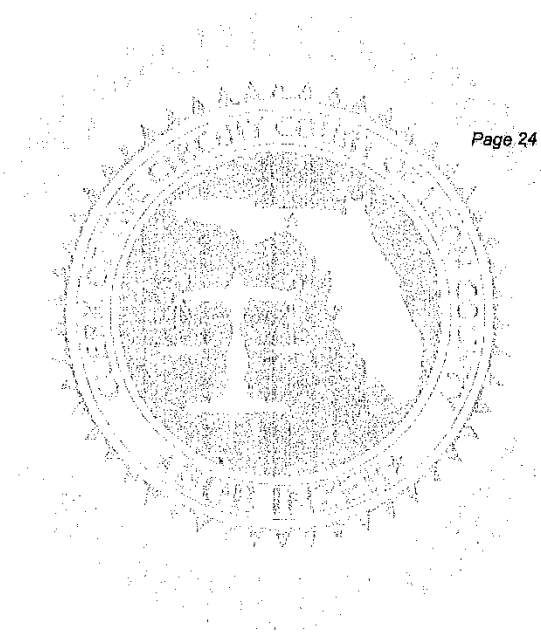
Defendant(s).
_____ /

**BORROWER'S REQUEST TO PARTICIPATE
IN THE RMFM PROGRAM**

_____, as the BORROWER on the mortgage sued upon in this case, hereby requests that this case be referred by the Court to mediation using the RMRM Program. The undersigned states, under penalty of perjury, that he or she is currently living on the property as a primary residence and the property has a homestead tax exemption.

Dated this ___ day of _____, 2010.

Signed: _____
BORROWER



IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Plaintiff(s)

Vs.

Civil Case No.: _____

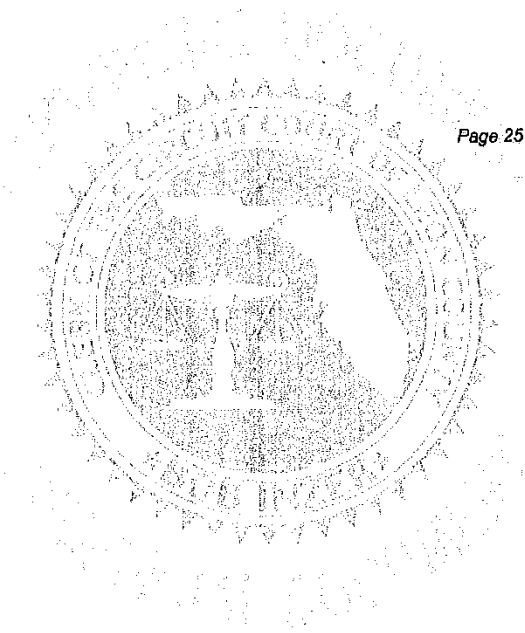
Defendant(s).
_____ /

**CERTIFICATE OF SERVICE OF
BORROWER'S REQUEST TO PARTICIPATE IN THE RMFM PROGRAM**

I HEREBY CERTIFY that a true and correct copy of the BORROWER'S REQUEST TO PARTICIPATE IN THE RMRM PROGRAM of the Second Judicial Circuit, in and for Leon County, Florida, has been furnished via electronic mail or U.S. Mail to: Clerk of the Circuit Court, Civil Division (original), Lender's Counsel, Borrower or Borrower's Counsel, (if any), Jr. Lienholder's Counsel (if any).

Dated this ____ day of _____, 2010.

Signature
(Print Name),
RMFM Program Manager
Tallahassee Bar Association, Inc.
Leon County Courthouse
301 S. Monroe Street, Suite 108
Tallahassee, FL 32301
(850) 222-3292, ext. 304
(850) 222-3864 facsimile
www.tallahasseebar.org/rmfmprogram



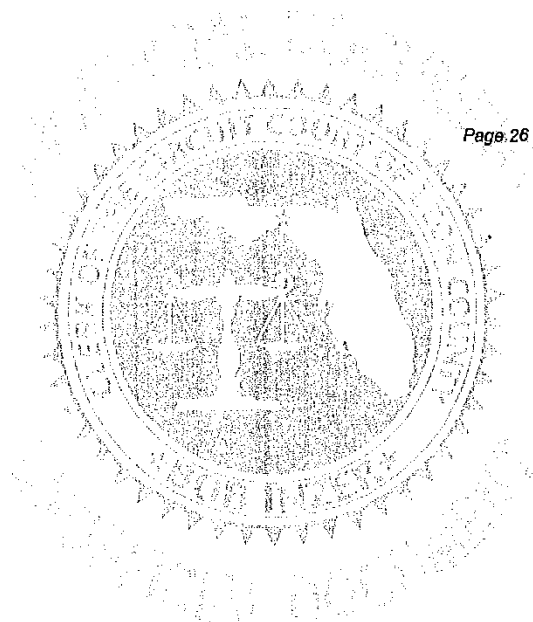
SECOND JUDICIAL CIRCUIT

EXHIBIT 4

BORROWER DECLINES TO PARTICIPATE IN RMFM PROGRAM

&

NOTICE OF BORROWERS NON-PARTICIPATION



IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Name of Plaintiff,

Plaintiff.

Vs.

Circuit Court Case No.:

Name of Defendant(s)

Defendant(s).
_____ /

**BORROWER DECLINES TO PARTICIPATE IN THE
RESIDENTIAL MORTGAGE FORECLOSURE MEDIATION PROGRAM**

Name of Borrower(s), as the borrower on the mortgage sued upon in this case, hereby states that I DO NOT wish to participate in mediation using the RMFM Program.

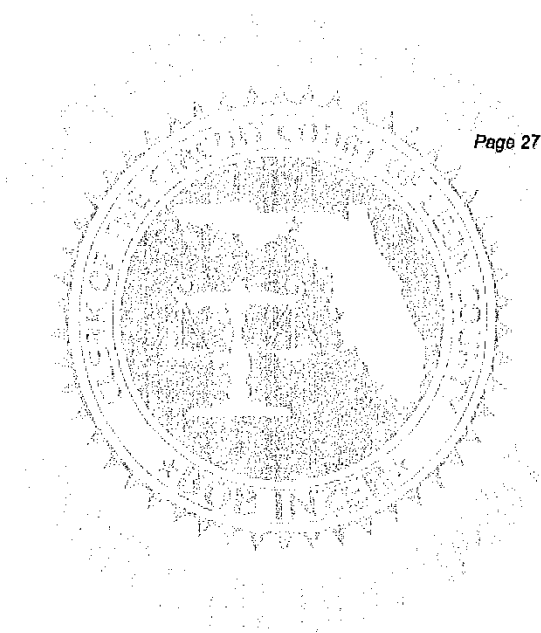
Dated this ___ day of _____, 2010.

Signature

Print Name: _____

Please return this completed form to:

**RMFM Program Manager
Tallahassee Bar Association, Inc.
Leon County Courthouse
301 South Monroe Street, Suite 108
Tallahassee, Florida 32301**



IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Plaintiff(s)

Vs.

Civil Case No.: _____

Defendant(s)
_____ /

**NOTICE OF BORROWER'S NON-PARTICIPATION
WITH RMFM PROGRAM**

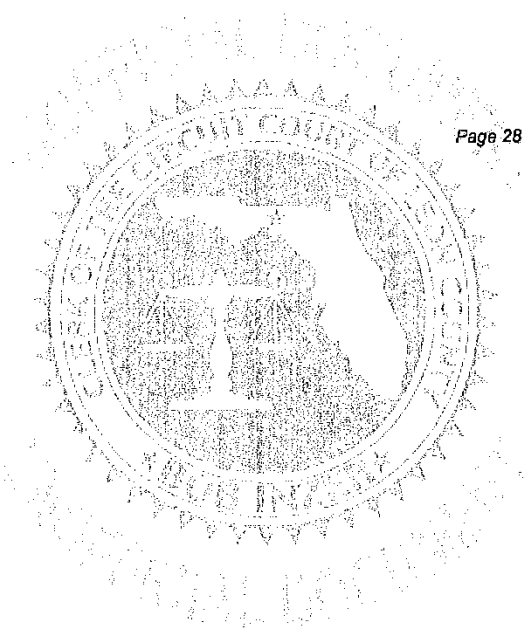
The Tallahassee Bar Association, PROGRAM MANAGER, hereby gives notice to the court that _____, BORROWER, will not be participating in the RMFM Program because on the following checked reason(s):

- Borrower has advised that he/she does not wish to participate in mediation for this case;
- Borrower has failed or refuses to meet with a foreclosure counselor;
- Borrower has failed or refuses to comply with the Borrower's Financial Disclosure for Mediation;
- The RMFM Program has been unable to contact Borrower.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail or U.S. Mail to: Clerk of the Circuit Court, Civil Division (original), Lender's Counsel, Borrower's Counsel, if any, Jr. Lienholder's Counsel, if any this ____ day of _____, 201__.

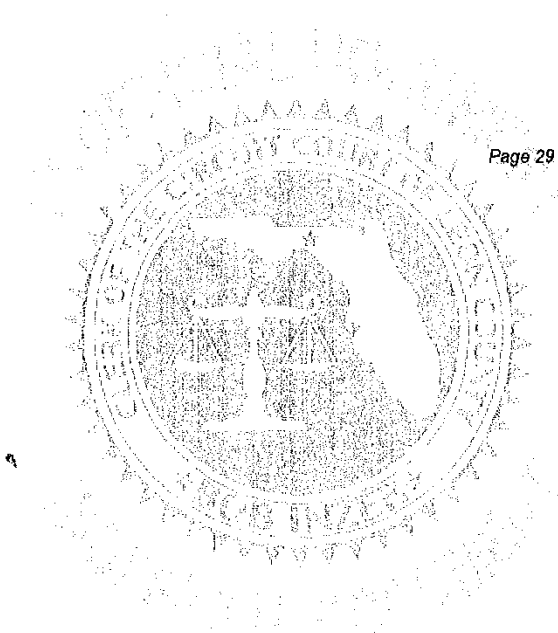
Signature
 (Print Name),
 Tallahassee Bar Association, Inc.
 RMFM Program Manager
 Leon County Courthouse
 301 S. Monroe Street, Suite 108
 Tallahassee, FL 32301
 (850) 222-3292, ext. 304
 (850) 222-3864 facsimile
www.tallahasseebar.org/rmfprogram



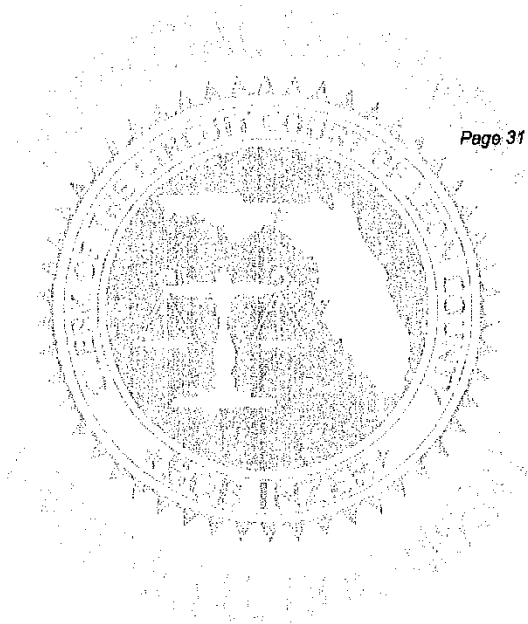
Second Judicial Circuit

EXHIBIT 5
Borrowers' Financial Disclosure for
Mediation

- 5a - Loan Modification
- 5b - Short Sale
- 5c - Deed in Lieu of Foreclosure

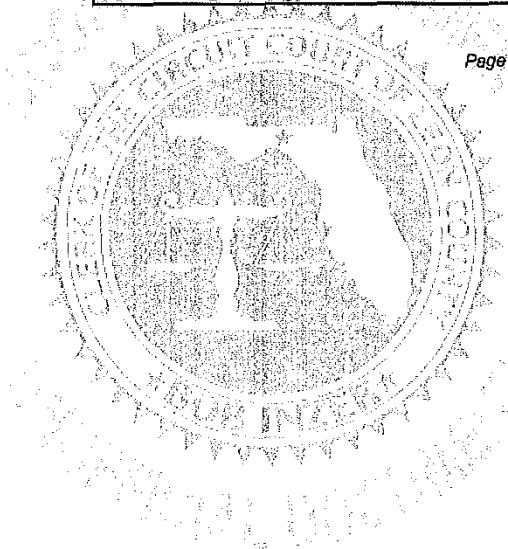


Net Salary/Wages			
Unemployment Income			
Child Support/Alimony			
Disability Income			
Rental Income			
Other Income			
Total (do not include Gross Income)			

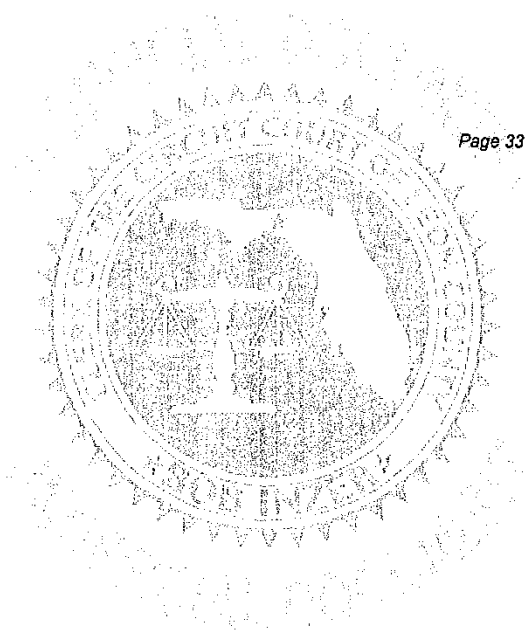


SECTION 3: EXPENSE & LIABILITIES		
	Monthly Payments	Balance Due
First Mortgage		
Second Mortgage		
Other Liens/Rents		
Homeowners' Association Dues		
Hazard Insurance		
Real Estate Taxes		
Child Care		
Health Insurance		
Medical Charges		
Credit Card/Installment Loan		
Credit Card/Installment Loan		
Credit Card/Installment Loan		
Automobile Loan 1		
Automobile Loan 2		
Auto/Gasoline/Insurance		
Food/Spending Money		
Water/Sewer/Utilities		
Phone/Cell Phone		
Other		
Total		

SECTION 4: ASSETS		
	Estimated Value	
Personal Residence		
Real Property		
Automobile 1		
Automobile 2		
Checking Accounts		
Savings Accounts		
IRA/401K/Keogh Accounts		
Stocks/Bonds/CDs		
Cash Value of Life Insurance		
Other		
Total		
Reason for Delinquency/Inability to Satisfy Mortgage Obligation		
<input type="checkbox"/> Reduction in Income	<input type="checkbox"/> Medical Issues	<input type="checkbox"/> Death of Family Member
<input type="checkbox"/> Poor budget management skills	<input type="checkbox"/> Increase in expenses	<input type="checkbox"/> Business venture failed



<input type="checkbox"/> Loss of Income	<input type="checkbox"/> Divorce/Separation	<input type="checkbox"/> Increase In loan payment
<input type="checkbox"/> Other		



SECTION 4: ASSETS CON'T

FURTHER EXPLANATION:

I/WE obtained a mortgage loan(s) secured by the above-described property.

I/WE have described my/our present financial condition and reason for default and have attached required documentation.

I/WE consent to the release of this financial worksheet and attachments to the mediator and the Plaintiff or Plaintiff's servicing company by way of the Plaintiff's attorney.

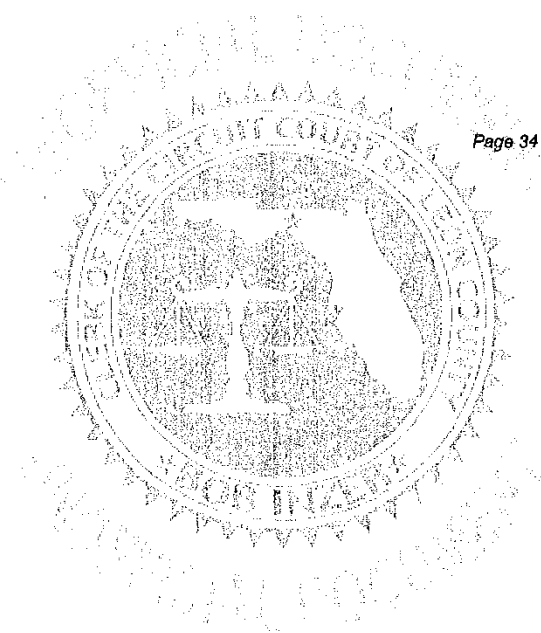
By signing below, I/WE certify the information provided is true and correct to the best of MY/OUR knowledge.

_____ Signature of Borrower	_____ SSN	_____ Date
_____ Signature of Co-Borrower	_____ SSN	_____ Date

Please attach the following:

- ✓ Last Federal Income Tax Return filed
- ✓ Proof of Income (e.g., one or two current pay stubs)
- ✓ Past two (2) bank statements
- ✓ If self-employed, attach a copy of the past six month's profit/loss statement

This is an attempt to collect a debt and any information obtained will be used for that purpose.



3

Fannie Mae Hardship Form 1021

Home Affordable Modification Program Hardship Affidavit

Borrower Name:

_____ (First Middle Last)

Date of Birth:

Co-Borrower:

Property Street Address:

Property City, State, Zip:

Servicer:

Loan Number:

In order to qualify for _____'s ("Servicer") offer to enter into an agreement to modify my loan, I/we am/are submitting this form to the Servicer and indicating by my/our checkmarks the one or more events that contribute to my/our difficulty making payments on my/our mortgage loan:

My income has been reduced or lost. For example: unemployment, underemployment, reduced job hours, reduced pay, or a decline in self-employed business earnings.
I have provided details below under "Explanation."

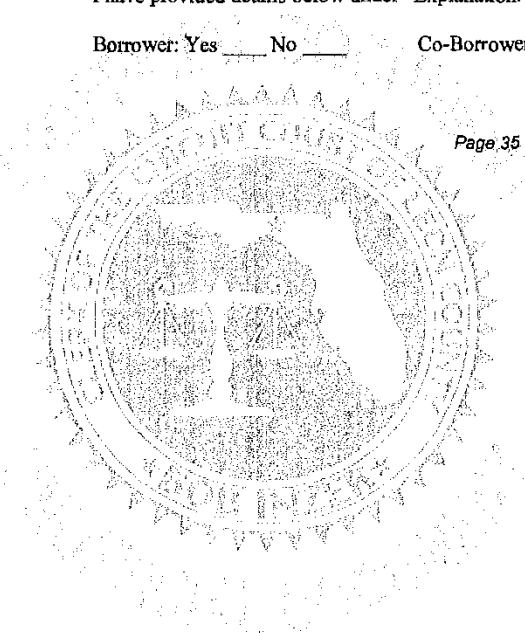
Borrower: Yes ___ No ___ Co-Borrower: Yes ___ No ___

My household financial circumstances have changed. For example: death in family, serious or chronic illness, permanent or short-term disability, increased family responsibilities (adoption or birth of a child, taking care of elderly relatives or other family members).
I have provided details below under "Explanation."

Borrower: Yes ___ No ___ Co-Borrower: Yes ___ No ___

My expenses have increased. For example: monthly mortgage payment has increased or will increase, high medical and health-care costs, uninsured losses (such as those due to fires or natural disasters), unexpectedly high utility bills, increased real property taxes.
I have provided details below under "Explanation."

Borrower: Yes ___ No ___ Co-Borrower: Yes ___ No ___



My cash reserves are insufficient to maintain the payment on my mortgage load and cover basic living expenses at the same time. Cash reserves include assets such as cash, savings, money market funds, marketable stocks or bonds (excluding retirement accounts). Cash reserves do not include assets that serve as an emergency fund (generally equal to three times my monthly debt payments). I have provided details below under "Explanation."

Borrower: Yes ___ No ___ Co-Borrower: Yes ___ No ___

My monthly debt payments are excessive, and I am overextended with my creditors. I may have used credit cards, home equity loans or other credit to make my monthly mortgage payments. I have provided details below under "Explanation."

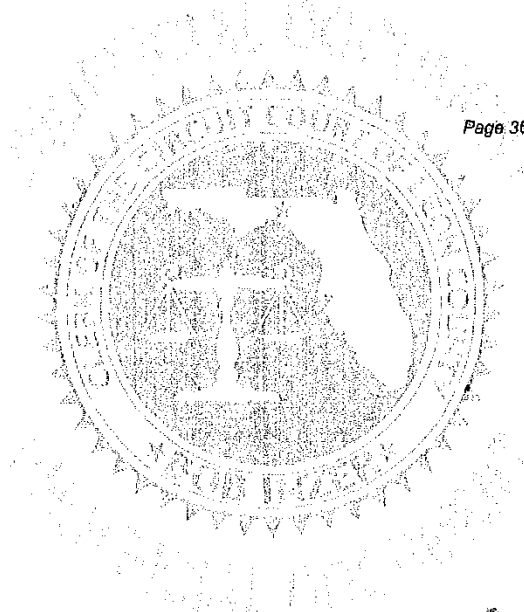
Borrower: Yes ___ No ___ Co-Borrower: Yes ___ No ___

There are other reasons I/we cannot make our mortgage payments. I have provided details below under "Explanation."

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government in order to monitor compliance with federal statutes that prohibit discrimination in housing. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender or servicer may not discriminate either on the basis of this information, or on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, the lender or servicer is required to note the information on the basis of visual observation or surname if you have made this request for a loan modification in person. If you do not wish to furnish the information, please check the box below.

Borrower:	Co-Borrower:
Ethnicity:	Ethnicity:
_____ Latino/Hispanic	_____ Latino/Hispanic
_____ Non-Latino/Hispanic	_____ Non-Latino/Hispanic
Race:	Race:
_____ American Indian/Alaska Native	_____ American Indian/Alaska Native
_____ Black/African American	_____ Black/African American
_____ Native Hawaiian/Other Pacific Islander	_____ Native Hawaiian/Other Pacific Islander
_____ White	_____ White
_____ I do not wish to furnish this information	_____ I do not wish to furnish this information



TO BE COMPLETED BY INTERVIEWER:

Interviewer's Name: _____
(Print of Type)

Interviewer's Employer
Name & Address: _____

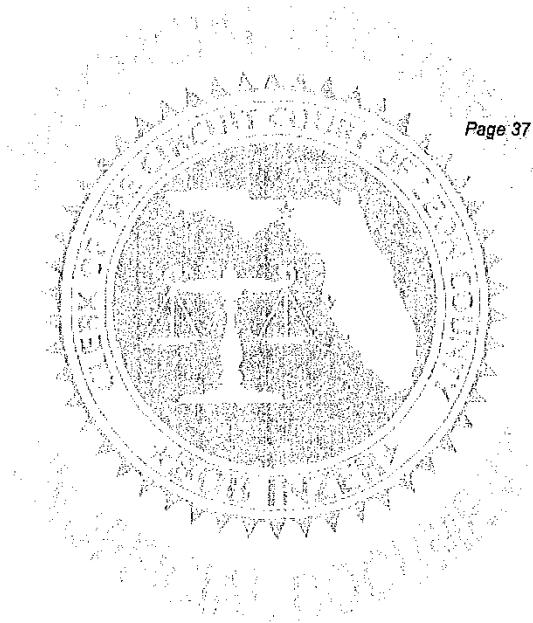
Interviewer's Signature: _____

Dated: _____

Address: _____

Telephone: _____
(Area Code + Telephone Number)

Internet Address: _____



BORROWER/CO-BORROWER ACKNOWLEDGEMENT

1. Under penalty of perjury, I/we certify that all of the information in this affidavit is truthful and the event(s) identified above has/have contributed to my/our need to modify the terms of my/our mortgage loan.
2. I/we understand and acknowledge the Servicer may investigate the accuracy of my/our statements, may require me/us to provide supporting documentation, and that knowingly submitting false information may violate Federal law.
3. I/we understand the Servicer will pull a current credit report on all borrowers obligated on the Note.
4. I/we understand that if I/we have intentionally defaulted on my/our existing mortgage, engaged in fraud or misrepresented any fact(s) in connection with this Hardship Affidavit, or if I/we do not provide all of the required documentation, the Servicer may cancel the Agreement and may pursue foreclosure on my/our home.
5. I/we certify that my/our property is owner-occupied and I/we have not received a condemnation notice.
6. I/we certify that I/we am/are willing to commit to credit counseling if it is determined that my/our financial hardship is related to excessive debt.
7. I/we certify that I/we am/are willing to provide all requested documents and respond to all Servicer communication in a timely manner. I/we understand that time is of the essence.
8. I/we understand that the Servicer will use this information to evaluate my/our eligibility for a loan modification or other workout, but the Servicer is not obligated to offer me/us assistance based solely on the representations in this affidavit.
9. I/we authorize and consent to Servicer disclosing to the U.S. Department of Treasury or other government agency, Fannie Mae and/or Freddie Mac any information provided by me/us or retained by Servicer in connection with the Home Affordable Modification Program.

BORROWER:

CO-BORROWER:

Signature

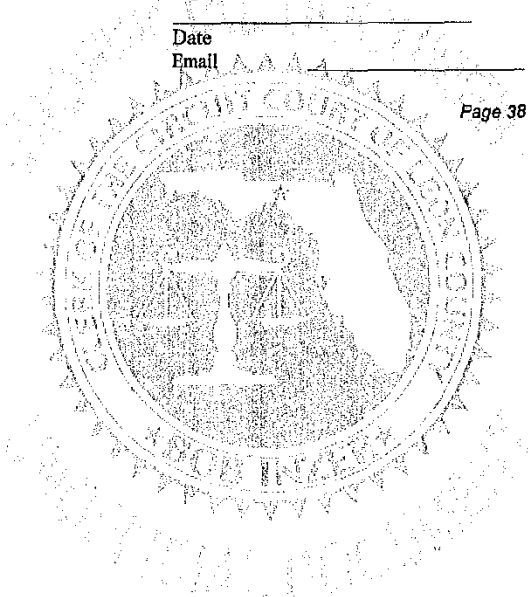
Signature

Date

Date

Email

Email



Address:	_____	Address:	_____
Cell Phone #:	_____	Cell Phone #:	_____
Home Phone #:	_____	Home Phone #:	_____
Work Phone #:	_____	Work Phone #:	_____
Social Security #:	_____	Social Security #:	_____

EXPLANATION: *(Provide any further explanation of the hardship making it difficult for you to pay on your mortgage.)*

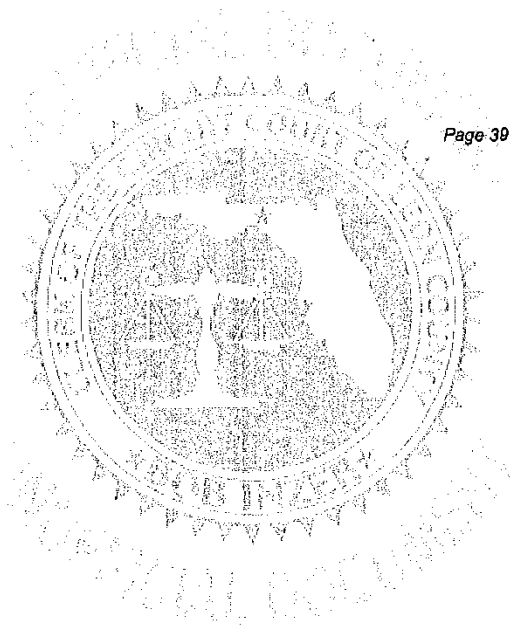


Exhibit 5b

In addition to the FANNIE MAE HARDSHIP FORM 1021 in Exhibit 5A above, the following information must be uploaded into the web-enabled IT platform on behalf of the borrower:

- Signed purchase contract for the homestead residence
- Listing agreement for sale of the homestead residence
- Preliminary HUD-1
- Written permission from the borrower authorizing the plaintiff or any agent of the plaintiff to speak with the real estate agent about the borrower's loan

Borrowers should be reminded that the sale MUST be an arm's length transaction, and the property cannot be sold to anyone with close personal or business ties to the borrower.

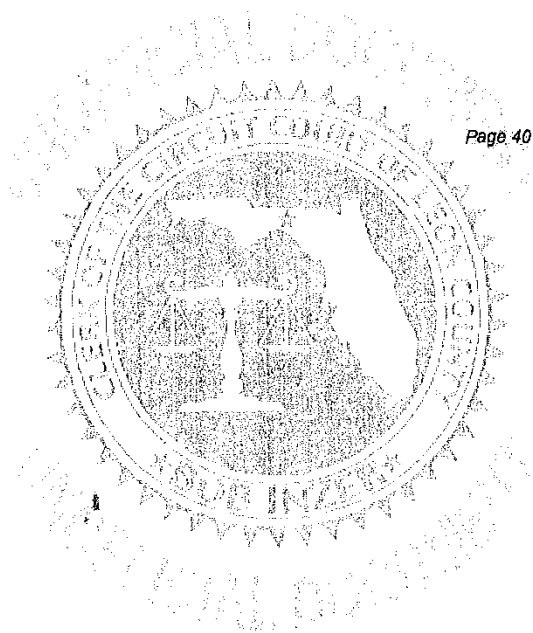
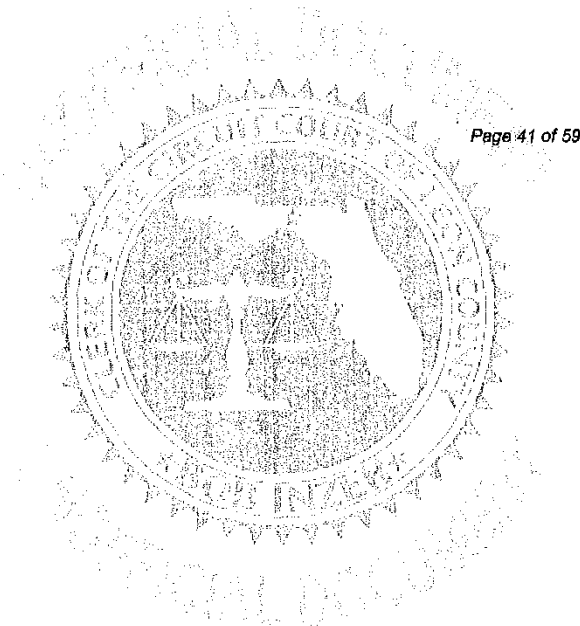


EXHIBIT 5c

BORROWER'S FINANCIAL DISCLOSURE FOR MEDIATION (DEED IN LIEU OF FORECLOSURE)

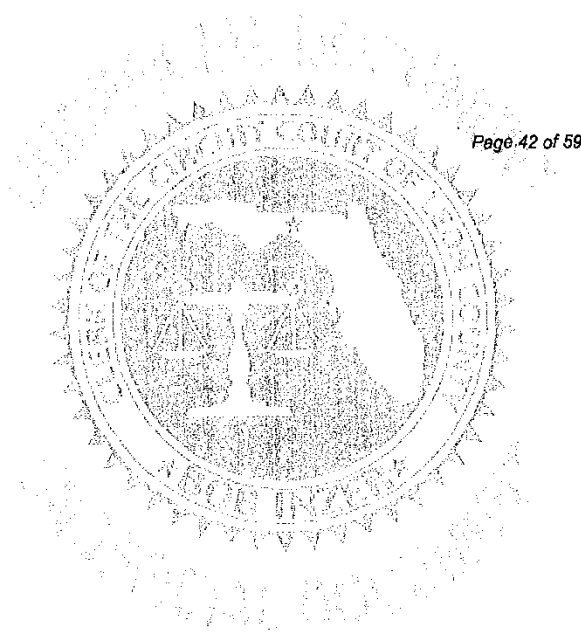
In addition to the FANNIE MAE HARDSHIP FORM 1021 in Exhibit 5A above, the following information must be uploaded into the web-enabled IT platform on behalf of the borrower:

Current title search for the homestead residence.



Second Judicial Circuit
EXHIBIT 6
Borrowers Request for Plaintiff's Disclosure
For Mediation

8



16

2

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

[Name of Plaintiff]

Plaintiff,

vs.

Case No.

[Names of Defendant(s)]

Defendant(s)

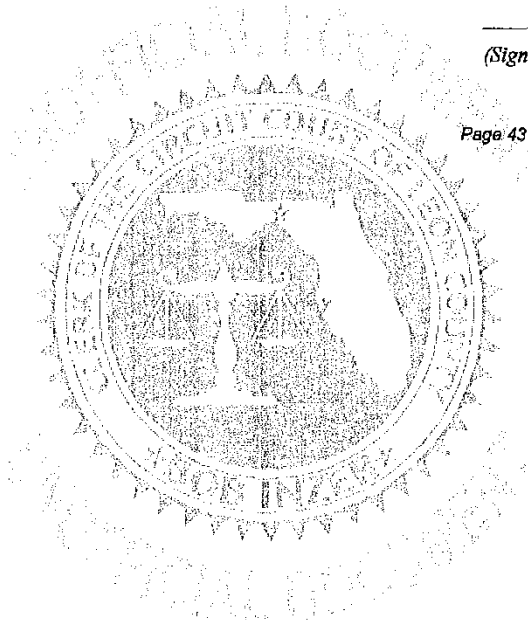
**NOTICE OF BORROWER'S REQUEST FOR
PLAINTIFF'S DISCLOSURE FOR MEDIATION**

_____, (*printed name*), as the borrower on the mortgage sued upon in this case, hereby requests the following information and disclosure from the plaintiff pursuant to Administrative Order 2010-05 entered in the Second Judicial Circuit (*mark the information and documents requested*):

- ___ Documentary evidence the Plaintiff is the owner and holder in due course of the note and mortgage sued upon.
- ___ A history showing the application of all payments by the borrower during the life of the loan.
- ___ A statement of the Plaintiff's position on the present net present value of the mortgage loan.
- ___ The most current appraisal of the property available to the Plaintiff.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U. S. Mail this ___ day of _____, 2010 to:
Plaintiff's/Lender's Counsel

(Signature of Borrower/Defendant)



CERTIFICATE OF SERVICE OF PROGRAM MANAGER

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Borrower's Request for Plaintiff's Disclosure for Mediation dated _____ has been served on Plaintiff's counsel via electronic mail and regular U. S. Mail this ___ day of _____, 2010.

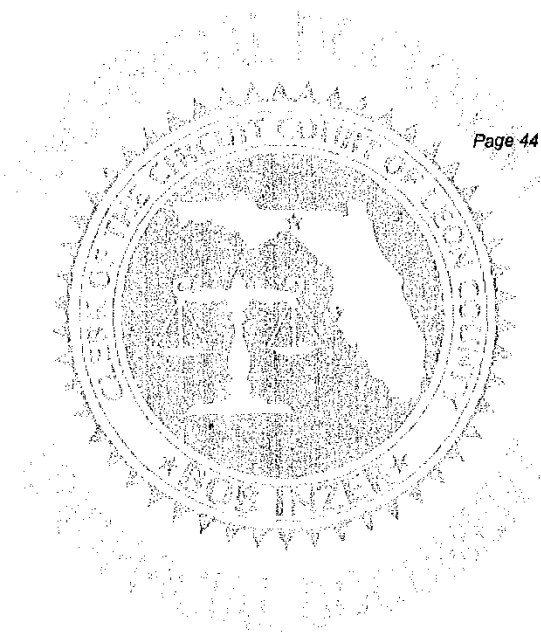
Clerk of Court *original*

Plaintiff's Counsel

Jr. Lienholder's Counsel, if any

Borrower

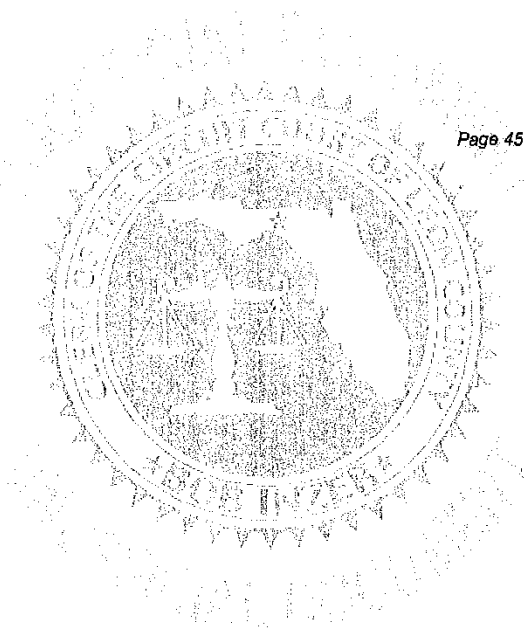
Program Manager, Second Judicial Circuit
Residential Mortgage Foreclosure Mediation Program
Tallahassee Bar Association, Inc.
Leon County Courthouse
301 S. Monroe Street, Suite 108
Tallahassee, FL 32301
(850) 222-3232 ext. 304
RMFMprogram@tallahasseebar.org



Second Judicial Circuit

EXHIBIT 7

**PLAINTIFF'S NOTICE OF ATTENDING MEDIATION
THROUGH THE USE OF COMMUNICATION EQUIPMENT**



IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

[Name of Plaintiff]

Plaintiff,

vs.

Case No.

[Names of Defendant(s)]

Defendant(s)

**NOTICE THAT PLAINTIFF'S REPRESENTATIVE
WILL APPEAR THROUGH THE USE OF COMMUNICATION EQUIPMENT
AND DESIGNATION OF AUTHORITY TO SIGN SETTLEMENT AGREEMENT**

Plaintiff gives notice of exercising the option to allow Plaintiff's representative designated in Form "A" filed in this case to attend mediation through the use of communication equipment, and designates *[name of person]* as the person who will be physically present at mediation with full authority on behalf of plaintiff to sign any settlement agreement reached at mediation.

On the date of the mediation, Plaintiff's representative can be reached by calling the following telephone number: *[telephone number, including area code and extension]*.

Signed on this ___ day of _____, 20__.

Signature of Plaintiff

Print Name of Plaintiff

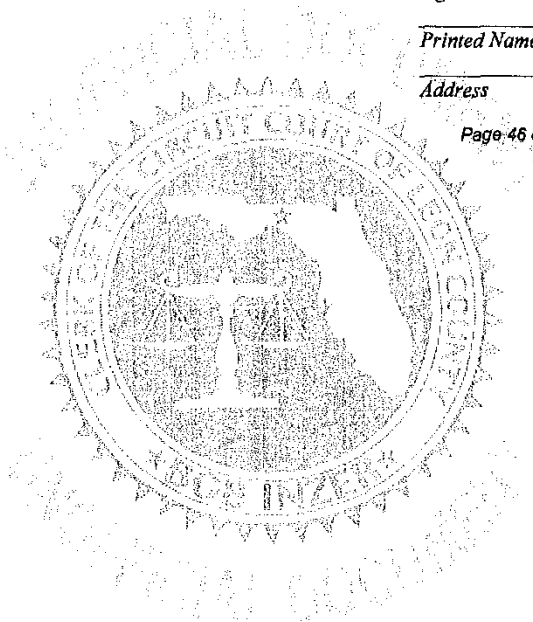
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail or U.S. Mail to: The RMFM Program Manager, Borrower or Borrower's Counsel, (if any), and Jr. Lienholders Counsel, (if any), this ___ day of _____, 201__.

Lender's Counsel
By: _____

Signature

Printed Name

Address



City, State Zip

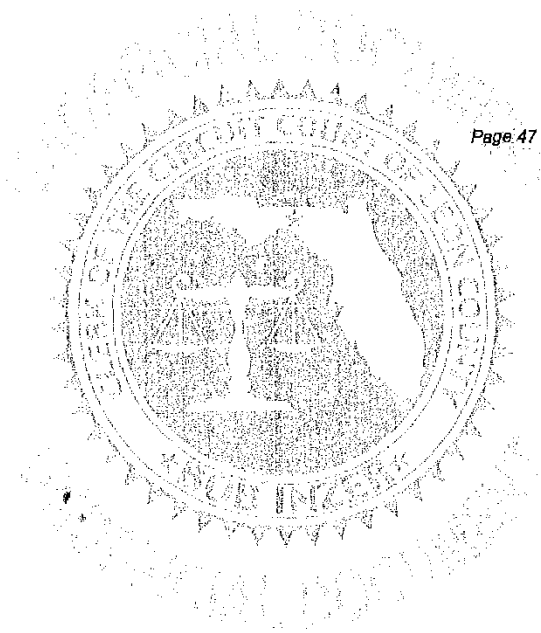
Telephone Number

Second Judicial Circuit

EXHIBIT 8

**PLAINTIFF'S CERTIFICATION REGARDING ATTENDANCE
AT MEDIATION THROUGH THE USE OF
COMMUNICATION EQUIPMENT**

Page 47 of 59



IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Plaintiff(s)

Vs.

Civil Case No.: _____

Defendant(s)

_____ /

**CERTIFICATION REGARDING ATTENDANCE AT MEDIATION
THROUGH THE USE OF COMMUNICATION EQUIPMENT**

[Name], who was designated as Plaintiff's Representative in Form "A" filed herein, under penalty of perjury, states to the court that [he][she] (mark as appropriate):

- Attended mediation through the use of communication equipment, and was on the communication equipment at all times during the entire mediation.
- Attended mediation, through the use of communication equipment but was not on the communication equipment at all times during the mediation.

Dated this ____ day of _____, 2010.

Plaintiff's Representative

Printed Name

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail or U.S. Mail to: The RMFM Program Manager, Borrower or Borrower's Counsel, (if any), and Jr. Lenders Counsel, (if any), this ____ day of _____, 201__.

Lender's Counsel

By: _____

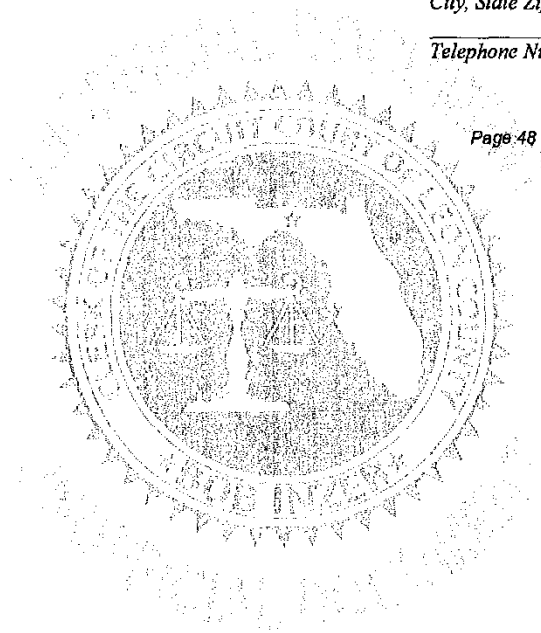
Signature

Printed Name

Address

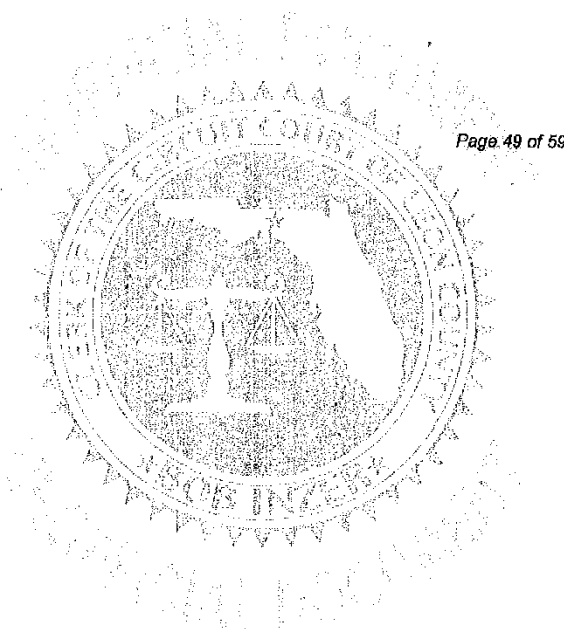
City, State Zip

Telephone Number



Second Judicial Circuit
EXHIBIT 9

Mediation Report



Page 49 of 59

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Plaintiff(s)

Vs.

Civil Case No.: _____

Defendant(s)

_____ /

MEDIATION REPORT
(RMFM Program)

Due within 10 days of Mediation

Pursuant to the Court's Order, a Mediation Conference was conducted by

_____, Certified Circuit Civil Mediator, on [date].

1) The following were present:

a) The Plaintiff's Representative, _____ and
Plaintiff's attorney, _____

b) The Defendant[s],
_____, and
his/her/their attorney[s], _____

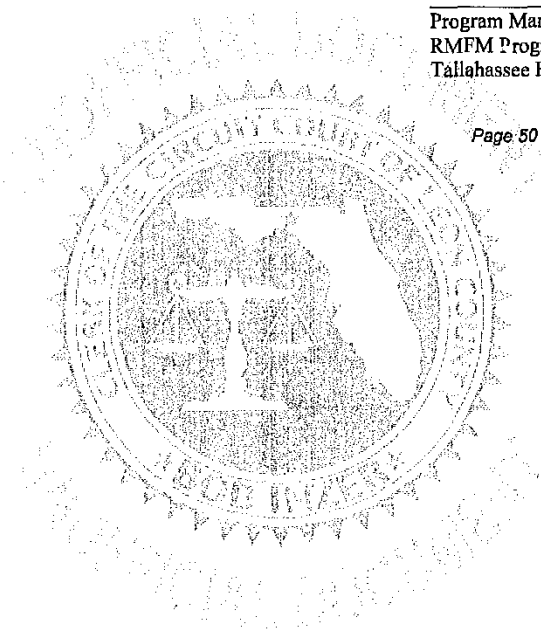
2) The result of the Mediation Conference is as follows (*Mediator selects only one*):

- A signed **SETTLEMENT AGREEMENT** was reached during this Conference.
- The parties have reached a total **IMPASSE**.
- The parties have agreed to **ADJOURN** the mediation to _____ [date].
- Mediation has been **TERMINATED**.

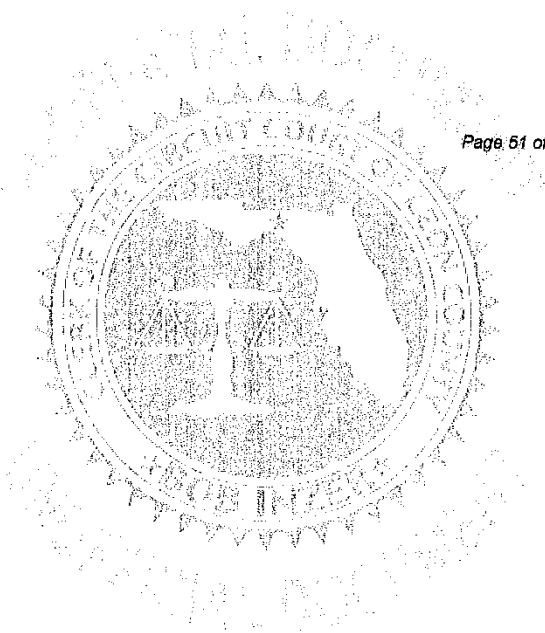
As required by Administrative Order 2010-05 a copy of the most recently filed Form A is attached.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail or U.S. Mail to: The Plaintiff and Plaintiff's Counsel, the Borrower or Borrower's Counsel, if any, and Jr. Lienholders Counsel, if any this ____ day of _____, 201__.

Program Manager, Second Judicial Circuit
RMFM Program
Tallahassee Bar Association, Inc.



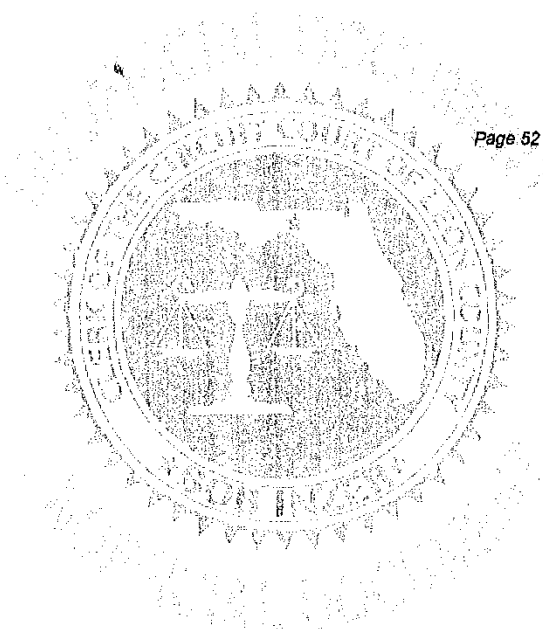
Leon County Courthouse
301 S. Monroe Street, Suite 108
Tallahassee, FL 32301
(850) 222-3232 ext. 304
RMFMprogram@tallahasseebar.org



Second Judicial Circuit

Exhibit 10

**Certification Regarding Settlement Authority
(Residence Not Homestead)**



IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Plaintiff(s)

Vs.

Civil Case No.: _____

Defendant(s)

_____ /

PLAINTIFF'S CERTIFICATION SETTLEMENT AUTHORITY
(Residence Is Not Homestead)

In compliance with Administrative Order 2010-05, the undersigned attorney certifies that following person or entity has full authority to negotiate a settlement of this case with the borrower without further consultation: *(All of the following information must be provided)*

Name: _____
Mailing Address: _____
Telephone Number _____
(including area code and extension):
Fax Number: _____
Email Address: _____
Loan/File Number: _____

Notice to Defendants: Because of privacy laws and rules, the plaintiff will only be able to negotiate a modification of the loan with the named borrower on the underlying debt.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail or U.S. Mail to: The RMFM Program Manager, Borrower or Borrower's Counsel, (if any), and Jr. Lienholders Counsel, (if any), this ____ day of _____, 201__.

Lender's Counsel

By: _____

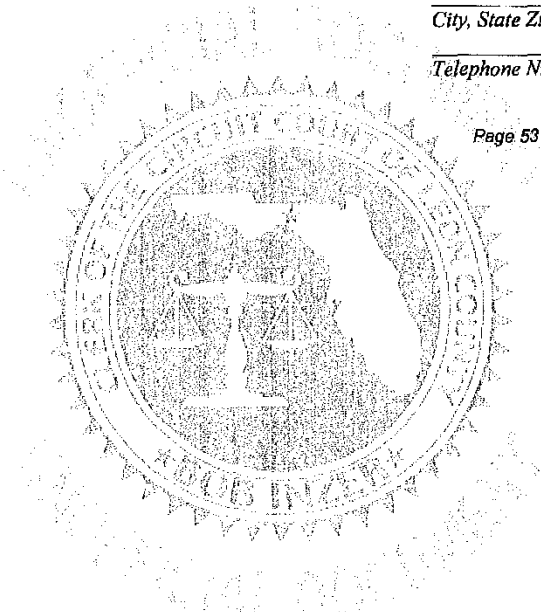
Signature

Printed Name

Address

City, State Zip

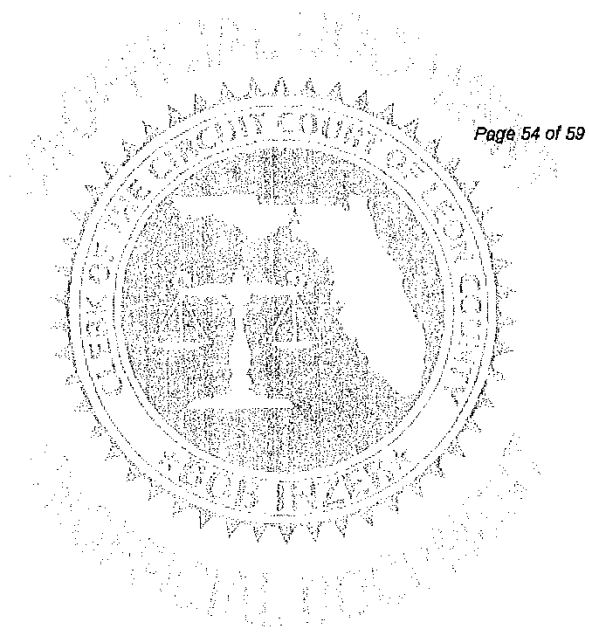
Telephone Number



Second Judicial Circuit

EXHIBIT 11

**ORDERS FOR REFERRALS, COMPLIANCE,
AND ENFORCEMENT**



Page 54 of 59

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Plaintiff(s),

vs.

Case No.

Defendant(s).

ORDER TO SHOW CAUSE

(Plaintiff's Failure to Comply with Administrative Order 2010-05.

It appearing to the court that Plaintiff has failed to comply with the requirements of Administrative Order 2010-05 in regards to the following (as marked):

Form A

___ Plaintiff failed to file Form A.

___ Plaintiff failed to electronically submit Form A to the Program Manager using the approved web-based information platform.

Payment of RMFM Program Fees

___ Plaintiff failed to pay the portion of the RMFM Program fees payable at the time suit is filed.

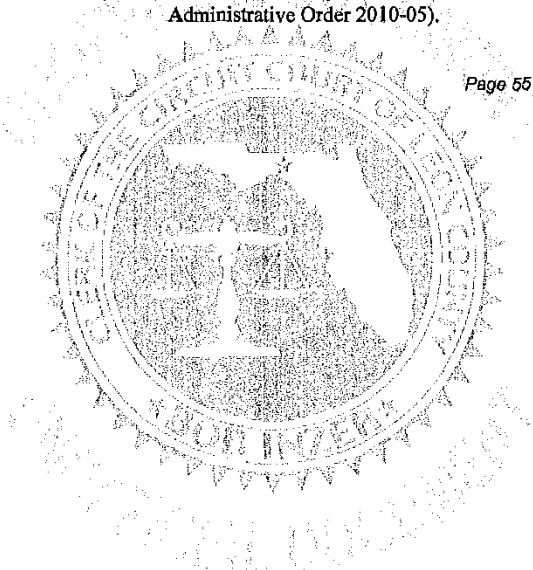
___ Plaintiff failed to pay the portion of the RMFM Program fees payable within 10 days after the notice conference is filed.

Electronic Transmittal of Case Number and Borrower Contact Information

___ Plaintiff failed to electronically submit the case number and contact information to the borrower to the Program Manager using the approved web-based information platform.

Failure to File and Serve Certification Regarding Settlement Authority

___ Plaintiff failed to file and serve the certification regarding the person or entity with full settlement authority where the residence is not homestead (Form Exhibit 9 attached to the Administrative Order 2010-05).



Attendance at Mediation

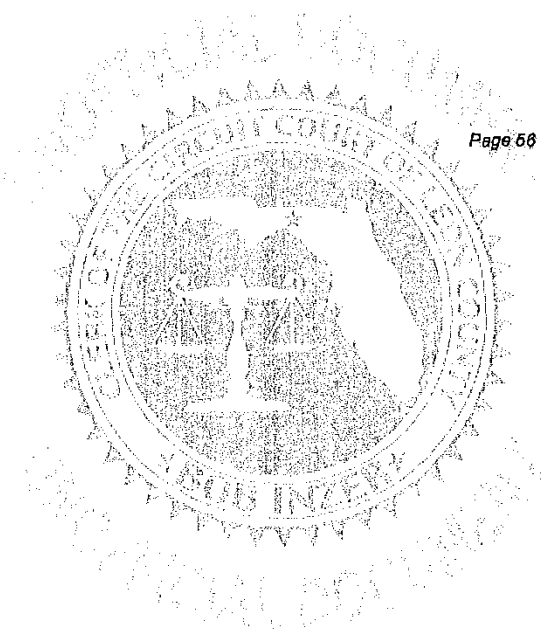
- ___ Plaintiff's counsel failed to attend mediation.
- ___ Plaintiff's representative designated in the most recent Form A filed in the court file failed to attend mediation.
- ___ Plaintiff's agent with full authority to sign a settlement agreement failed to attend mediation.
- ___ Plaintiff's representative failed to attend by telephone at all times during the mediation session.
- ___ After the mediation resulted in an impasse, plaintiff's representative failed to file the certification regarding attendance at mediation by telephone at all times (Form Exhibit 7 attached to the Administrative Order 2010-05).

IT IS ORDERED that Plaintiff shall appear before the court at the _____ County Courthouse, courtroom _____ on the _____ day of _____, 201__ to show cause why sanctions for noncompliance the Administrative Order 2010-05 should not be imposed. Plaintiff is cautioned that failure to appear at the show cause hearing may result in the case being dismissed and the imposition of other appropriate sanctions.

Dated this _____ day of _____, 201__.

Circuit Judge

Copies Furnished



IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Plaintiff(s),

vs.

Case No.

Defendant(s).

ORDER AFTER SHOW CAUSE HEARING
(Plaintiff's Failure to Comply with Administrative Order 2010-05)

The court having determined that Plaintiff has failed to comply with the requirements of Administrative Order 2010-05, it is ORDERED and ADJUDGED (as marked):

Form A

___ Within 10 days from the date of this order, Plaintiff shall file and electronically submit Form A to the Program Manager using the approved web-based information platform.

Payment of RMFM Program Fees

___ Within 10 days from the date of this order, Plaintiff shall pay \$ _____ of the RMFM Program fees to the Program Manager.

Electronic Transmittal of Case Number and Borrower Contact Information

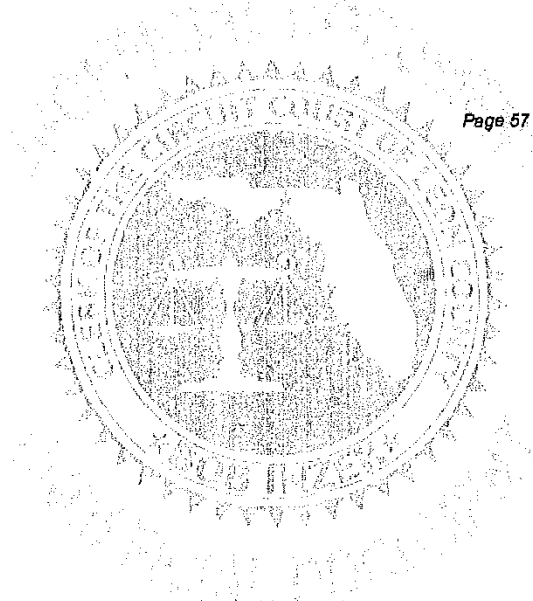
___ Within 10 days from the date of this order, Plaintiff shall electronically submit the case number and contact information to the borrower to the Program Manager using the approved web-based information platform.

Failure to File and Serve Certification Regarding Settlement Authority

___ Within 10 days after the date of this order, Plaintiff shall file and serve the certification regarding the person or entity with full settlement authority where the residence is not homestead (Form Exhibit 9 attached to the Administrative Order 2010-05).

Attendance at Mediation

___ Plaintiff's counsel shall attend the next scheduled mediation in this case.



____ (Name), as plaintiff's representative designated in the most recent Form A filed in the court file, shall physically attend the next scheduled mediation in this case.

____ (Name), as plaintiff's agent with full authority to sign a settlement agreement shall attend the next scheduled mediation in this case.

Dismissal

____ This case is dismissed without prejudice.

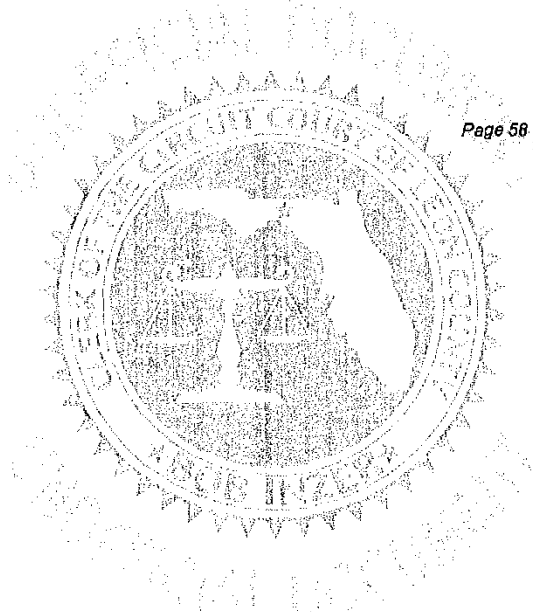
Additional Sanctions

____ The court determines _____ is entitled to an award of attorney's fees and cost, the amount of which shall be determined at a subsequent hearing.

Dated this _____ day of _____, 2010.

Circuit Judge

Copies Furnished



IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Plaintiff(s),

vs.

Case No.

Defendant(s).

ORDER REFERRING CASE TO RMFM PROGRAM
(Case Filed Prior to June 1, 2010)

It appearing to the court that the residence which is the subject of this action to foreclose a mortgage is a "homestead residence" to which Administrative Order 2010-05 applies and that Defendant _____ (Borrower) has requested that the case be referred to mediation, it is ORDERED:

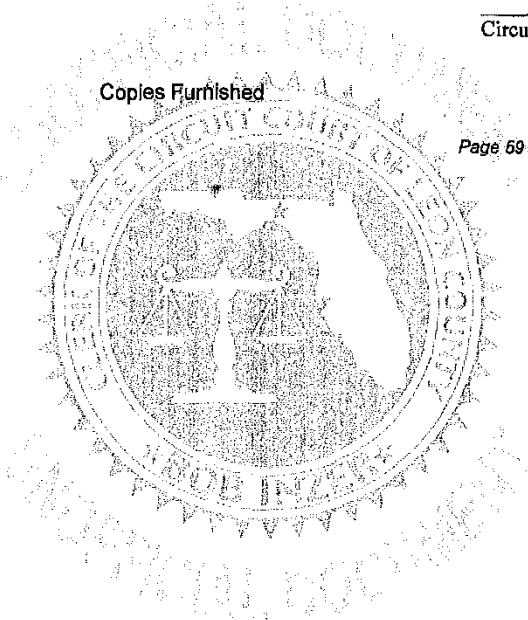
1. The case is referred to the RMFM Program for mediation, and the plaintiff and borrower shall comply with Administrative Order 2010-05.
2. Within 10 days from the date of this order, the plaintiff shall pay that portion of the RMFM Program fees payable at the time suit is filed, file a properly filled out Form A in the manner required by the administrative order, and electronically transmit Form A to the Program Manager using the approved web-based information platform.
3. The plaintiff and borrower are to cooperate with the Program Manager and must attend any mediation scheduled by the Program Manager.
4. The plaintiff is advised and cautioned that failure to comply in a timely manner with the requirements of this order will result in dismissal of the cause of action without further order of the court.

Dated this _____ day of _____, 2010.

Circuit Judge

Copies Furnished

Page 69 of 59



20100068378
THIS DOCUMENT HAS BEEN
RECORDED IN THE PUBLIC RECORDS
OF
LEON COUNTY FL
BK: 4172 PG:554, Page1 of 19
10/08/2010 at 10:50 AM,
BOB INZER, CLERK OF COURTS

IN THE SECOND JUDICIAL CIRCUIT OF
FLORIDA

OFFICE OF THE CHIEF JUDGE

ADMINISTRATIVE ORDER 2010-09

IN RE: **UNIFORM PROCEDURES FOR RESIDENTIAL MORTGAGE
FORECLOSURE CASES**

WHEREAS, pursuant to Article V, section 2(d) of the Florida Constitution, and section 43.26, Florida Statutes, the chief judge of each judicial circuit is charged with the authority and power to do everything necessary to promote the prompt and efficient administration of justice, and rule 2.215(b)(3), Florida Rules of Judicial Administration, mandates the chief judge to “develop an administrative plan for the efficient and proper administration of all courts within the circuit;” and

WHEREAS, rule 2.545 of the Rules of Judicial Administration requires that the trial courts “...take charge of all cases at an early stage in the litigation and...control the progress of the case thereafter until the case is determined...”, which includes... “assuming early and continuous control of the court calendar; ...” “identifying priority cases;” “...implement such docket control policies as may be necessary to advance priority cases to ensure prompt resolution;” “...developing rational and effective trial setting policies, and advancing the trial setting of priority cases, older cases...”; and

WHEREAS, the Supreme Court of Florida has determined that effective case management is one of the best methods the courts can employ to facilitate and provide a more efficient use of limited judicial and clerk resources in a court system that is already overburdened; and

WHEREAS, the volume of mortgage foreclosure case filings have significantly increased in the Second Judicial Circuit of Florida requiring a uniform procedure for case management,

IT IS THEREFORE

ORDERED:

1. Any Motion for Summary Judgment filed in a residential mortgage foreclosure in Leon, Gadsden and Franklin Counties, except as provided herein, shall be governed by the following Uniform Procedures:
 - a. Hearings for Summary Judgments shall be scheduled by contacting the Second Judicial Circuit Case Scheduler (hereinafter Scheduler).

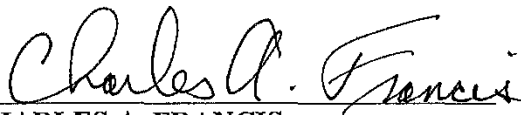
- i. The contact information for the current Scheduler may be found on the Second Judicial Circuit of Florida website which is located at: (<http://www.leoncountyfl.gov/2ndCircuit/ForeclosureProcedure.php>.)
 - ii. The Scheduler at the time of the execution of this order is Ina Hawkins, whose email address is HawkinsIn@leoncountyfl.gov.
 - iii. The primary means of contact shall be by email.
 - iv. Only if necessary, contact may be made by telephone by calling (850) 577-8067.
- b. A maximum of twenty (20) cases may be set on each calendar by a single law firm, subject to available calendar time.
 - c. Each case may be set for a maximum of fifteen (15) minutes.
 - d. No hearing may be scheduled or the time reserved for summary judgment hearings in residential foreclosure cases until such time as the motion for summary judgment and all required supporting summary judgment evidence, including but not limited to original note, mortgage, and assignments of mortgage where applicable, and all supporting affidavits are filed with the clerk. A summary judgment hearing package shall be transmitted to the Scheduler not less than ten (10) days prior to the scheduled hearing. In the event the package is not received within such ten (10) day period, in addition to any sanction hereinafter set forth, the hearing shall be removed from the calendar. A summary judgment hearing package shall include, but not be limited to:
 - i. The Motion for Summary Judgment.
 - ii. The Notice of Hearing.
 - iii. The Original Note and Mortgage (copies will not be accepted). In lieu of the original note, a bond in the face amount of the requested final judgment amount conditioned upon indemnification of the maker(s) of the note for any costs, expenses or damages incurred as the result of the enforcement of the note by any other party, and issued by a Florida licensed surety, shall be filed with the clerk within such time.
 - iv. Copy of Affidavit in Support of Summary Judgment.
 - v. Copy of Affidavit in Support of Attorney's Fees.
 - vi. Supreme Court approved Summary Final Judgment, a copy being attached as Exhibit A. No additional language shall be added.
 - vii. Copy of Supreme Court approved Affidavit of Diligent Search and Inquiry, where applicable, a copy being attached as Exhibit B.

- viii. An original Notice of Sale.
 - ix. An original Final Disposition Form.
 - x. Sufficient copies and envelopes with sufficient postage attached, addressed to all necessary individuals to serve copies of original orders, when entered.
 - xi. Copies of any other evidence filed and necessary to support the Motion.
- e. All attorneys must appear in person. **Telephonic appearances shall not be permitted.**
- f. **All summary judgment hearings shall be held in the locations in each respective county** in the Second Judicial Circuit as follows:
- i. Franklin County: Franklin County Courthouse, 22 Market St., Hearing Room Third Floor, Apalachicola, FL 32320
 - ii. Gadsden County: Guy A. Race Judicial Complex; West Entrance; 13 N. Monroe St.; Quincy, FL 32351
 - iii. Leon County: Leon County Courthouse, 301 S. Monroe St., Room 301-B, Tallahassee, FL 32301
- g. All cases where the residence is owner-occupied, and a response has been filed by the Defendant which seeks relief shall comply with the provisions of Administrative Order of the Second Judicial Circuit of Florida, 2010-05, which requires completion of the requisites for the Residential Mortgage Foreclosure Mediation Program prior to a Motion for Summary Judgment being set for hearing.
- h. Upon confirmation of the hearing date, **all original notices for hearing must be filed with the clerk of court at the location hereinafter set forth within seven (7) days of setting.** In the event this provision is violated, in addition to any sanction hereinafter set forth, the case shall be removed from the calendar on which it is scheduled. The location of the courts are:
- i. Franklin County Clerk: Franklin County Courthouse, 22 Market St., Apalachicola, FL 32320
 - ii. Gadsden County Clerk: Guy A. Race Judicial Complex; West Entrance; 13 N. Monroe St.; Quincy, FL 32351
 - iii. Leon County Clerk: Leon County Courthouse, 301 S. Monroe St., Room 301-B, Tallahassee, FL 32301
 - iv. A courtesy copy of the notice shall be sent to the Scheduler at 301 S. Monroe St., Room 301-B, Tallahassee, Florida 32301.

- i. Once a hearing is set, it can only be canceled by order of this Court upon the Motion to Cancel and Reschedule Foreclosure Hearing on the approved form attached as Exhibit C, being filed by any party.
 - i. The Motion and proposed Order shall be transmitted to the presiding judge in the case.
 - ii. The Motion shall not be sent to the Scheduler.
 - iii. The Motion shall be filed a minimum of five (5) days prior to the scheduled hearing, except in the event of a bona fide emergency.
2. Once a judgment has been entered and a sale has been scheduled, the sale may be canceled only upon Motion to Cancel and Reschedule Foreclosure Sale utilizing the form attached hereto as Exhibit D. The original shall be filed with the clerk of court.
3. All parties shall timely cooperate with the Scheduler at all times, including but not limited to, supplying all requested information in a timely manner.
4. The following procedures will take effect immediately, for all Summary Judgment Motions in residential mortgage foreclosure cases for Jefferson County:
 - a. All foreclosure hearings, including Motions for Summary Judgment, will be scheduled by contacting the assigned judge's judicial assistant who is currently Lynn Underwood, at 850-577-4312 or 850-342-0247.
 - b. Hearings will take place at: The Jefferson County Courthouse, 1 Courthouse Circle, Monticello, Florida 32344.
 - c. Please adhere to the dates and times provided by the judicial assistant at the time of scheduling.
5. The following procedures will take effect immediately, for all Summary Judgment Motions in residential mortgage foreclosure cases for Liberty County:
 - a. All foreclosure hearings, including Motions for Summary Judgment, will be scheduled by contacting Kathy Brown, Liberty County Clerk's Office, at 850-643-5188, Ext. 101.
 - b. Hearings will take place at: The Liberty County Courthouse, 10818 N.W. State Road 20, Bristol, Florida 32321.
 - c. Please adhere to the dates and times provided by the judicial assistant at the time of scheduling.

6. The following procedures will take effect immediately, for all Summary Judgment Motions in residential mortgage foreclosure cases for Wakulla County:
 - a. All foreclosure hearings, including Motions for Summary Judgment, will be scheduled by contacting the assigned judge's judicial assistant who is currently Deanna Gravius, at 850-926-0917.
 - b. Hearings will take place at: The Wakulla County Community Center, 318 Shadeville Highway, Crawfordville, Florida 32327. This is a temporary location, and subject to change upon completion of the current courthouse improvement project. Any change in location shall be posted on the Second Judicial Circuit of Florida website.
 - c. Please adhere to the dates and times provided by the judicial assistant at the time of scheduling.
7. In the event a party fails to comply with any provision of this order, the case will be subject to immediate dismissal without prejudice, and without the necessity of further notice or hearing. This order shall be sufficient notice of this provision.

DONE AND ORDERED, in chambers at Tallahassee, Leon County, Florida, this 7th day of October, 2010.


CHARLES A. FRANCIS
Chief Judge

Copies Furnished:
All Circuit and County Judges, Second Judicial Circuit
All Clerks of the Circuit Court, Second Judicial Circuit
Second Judicial Circuit of Florida Website

EXHIBIT A

FINAL JUDGMENT OF FORECLOSURE

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
_____ COUNTY, STATE OF FLORIDA

_____,
Plaintiff,

vs.

Case No.: _____

_____,
Defendant.

_____ /

FINAL JUDGMENT OF FORECLOSURE

This action was tried before the court. On the evidence presented

IT IS ADJUDGED that:

1. Plaintiff, _____ (name and address), is due

Principal	\$ _____
Interest to date of this judgment	_____
Title search expense	_____
Taxes	_____
Attorneys' fees	
Finding as to reasonable number of hours:	_____
Finding as to reasonable hourly rate:	_____
Attorneys' fees total	_____
Court costs, now taxed	_____
Other: _____	_____
Subtotal	\$ _____
LESS: Escrow balance	_____
LESS: Other _____	_____
TOTAL	\$ _____

that shall bear interest at the rate of _____% a year.

2. Plaintiff holds a lien for the total sum superior to all claims or estates of defendant(s), on the following described property in _____ County, Florida:

(describe property)

3. If the total sum with interest at the rate described in paragraph 1 and all costs accrued subsequent to this judgment are not paid, the clerk of this court shall sell the property at public sale on(date)....., to the highest bidder for cash, except as prescribed in paragraph 4, at the courthouse located at(street address of courthouse)..... in County in(name of city)....., Florida, in accordance with section 45.031, Florida Statutes, using the following method (CHECK ONE):

At(location of sale at courthouse; e.g., north door)....., beginning at(time of sale)..... on the prescribed date.

By electronic sale beginning at(time of sale)..... on the prescribed date at(website).....

4. Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the clerk if plaintiff is not the purchaser of the property for sale, provided, however, that the purchaser of the property for sale shall be responsible for the documentary stamps payable on the certificate of title. If plaintiff is the purchaser, the clerk shall credit plaintiff's bid with the total sum with interest and costs accruing subsequent to this judgment, or such part of it, as is necessary to pay the bid in full.

5. On filing the certificate of title the clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of plaintiff's costs; second, documentary stamps affixed to the certificate; third, plaintiff's attorneys' fees; fourth, the total sum due to plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 1 from this date to the date of the sale; and by retaining any remaining amount pending the further order of this court.

6. On filing the certificate of sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property, except as to claims or rights under chapter 718 or chapter 720, Florida Statutes, if any. Upon the filing of the certificate of title, the person named on the certificate of title shall be let into possession of the property. If any defendant remains in possession of the property, the clerk shall without further order of the court issue forthwith a writ of possession upon request of the person named on the certificate of title.

7. Jurisdiction of this action is retained to enter further orders that are proper including, without limitation, a deficiency judgment.

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE

ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THE FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

[If the property being foreclosed on has qualified for the homestead tax exemption in the most recent approved tax roll, the final judgment shall additionally contain the following statement in conspicuous type:]

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, (INSERT INFORMATION FOR APPLICABLE COURT) WITHIN 10 DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT (NAME OF LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

ORDERED at _____, Florida, on _____.

Circuit Judge

EXHIBIT B

**AFFIDAVIT OF DILIGENT SEARCH
AND INQUIRY**

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
COUNTY, STATE OF FLORIDA

_____,
Plaintiff,

vs.

Case No.: _____

_____,
Defendant.

_____ /

AFFIDAVIT OF DILIGENT SEARCH AND INQUIRY

I, (*full legal name*) _____ (individually or an Employee of _____), being sworn, certify that the following information is true:

1. I have made diligent search and inquiry to discover the current residence of _____, who is [over 18 years old] [under 18 years old] [age is unknown] (circle one). **Refer to checklist below and identify all actions taken (any additional information included such as the date the action was taken and the person with whom you spoke is helpful) (attach additional sheet if necessary):**

[check all that apply]

- _____ Inquiry of Social Security Information
- _____ Telephone listings in the last known locations of defendant's residence
- _____ Statewide directory assistance search
- _____ Internet people finder search {specify sites searched}
- _____ Voter Registration in the area where defendant was last known to reside.
- _____ Nationwide Masterfile Death Search
- _____ Tax Collector's records in area where defendant was last known to reside.
- _____ Tax Assessor's records in area where defendant was last known to reside
- _____ Department of Motor vehicle records in the state of defendant's last known address
- _____ Driver's License records search in the state of defendant's last known address.

_____ Department of Corrections records in the state of defendant's last known address.

_____ Federal Prison records search.

_____ Regulatory agencies for professional or occupational licensing.

_____ Inquiry to determine if defendant is in military service.

_____ Last known employment of defendant.

List all additional efforts made to locate defendant:

Attempts to Serve Process and Results:

_____ I inquired of the occupant of the premises whether the occupant knows the location of the borrower-defendant, with the following results:

2. _____ **current residence**

[check one only]

_____ a. _____'s current residence is unknown to me

_____ b. _____'s current residence is in some state or country other than Florida and _____'s last known address is:

_____ c. The _____, having residence in Florida, has been absent from Florida for more than 60 days prior to the date of this affidavit, or conceals him (her) self so that process cannot be served personally upon him or her, and I believe there is no person in the state upon whom service of process would bind this absent or concealed _____.

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated: _____

Signature of Affiant
Printed Name: _____
Address: _____
City, State, Zip: _____
Phone: _____
Telefacsimile: _____

STATE OF _____
COUNTY OF _____

Sworn to or affirmed and signed before me on this ____ day of _____, 20 ____ by _____.

NOTARY PUBLIC, STATE OF _____

(Print, Type or Stamp Commissioned Name of Notary Public)

____ Personally known
____ Produced identification

Type of identification produced: _____

EXHIBIT C

**MOTION TO CANCEL AND
RESCHEDULE FORECLOSURE
HEARING**

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
_____ COUNTY, STATE OF FLORIDA

_____,
Plaintiff,

vs.

Case No.: _____

_____,
Defendant.

_____ /

MOTION TO CANCEL AND RESCHEDULE FORECLOSURE HEARING

Plaintiff moves to cancel and reschedule the mortgage foreclosure hearing because:

1. On ____ this Court scheduled a foreclosure hearing for _____, 20__.
2. The hearing needs to be canceled for the following reason(s):
 - a. _____ Plaintiff and Defendant are continuing to be involved in loss mitigation;
 - b. _____ Defendant is negotiating for the sale of the property that is the subject of this matter and Plaintiff wants to allow the Defendant an opportunity to sell the property and pay off the debt that is due and owing to Plaintiff.
 - c. _____ Defendant has entered into a contract to sell the property that is the subject of this matter and Plaintiff wants to give the Defendant an opportunity to consummate the sale and pay off the debt that is due and owing to Plaintiff.
 - d. _____ Defendant has filed a Chapter ____ Petition under the Federal Bankruptcy Code;
 - e. _____ Plaintiff has ordered but has not received a statement of value/appraisal for the property;
 - f. _____ Plaintiff and Defendant have entered into a Forbearance Agreement;
 - g. _____ Other

3. If this Court cancels the foreclosure hearing, Plaintiff moves that it be rescheduled.

I hereby certify that a copy of the foregoing Motion has been furnished by U.S. mail postage prepaid, facsimile or hand delivery to _____ this _____ day of _____, 20__.

Dated: _____

Signature of Plaintiff
Printed Name: _____
Address: _____
City, State, Zip: _____
Phone: _____
Telefacsimile: _____

EXHIBIT D

**MOTION TO CANCEL AND
RESCHEDULE FORECLOSURE SALE**

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
COUNTY, STATE OF FLORIDA

_____,
Plaintiff,

vs.

Case No.: _____

_____,
Defendant.

_____ /

MOTION TO CANCEL AND RESCHEDULE FORECLOSURE SALE

Plaintiff moves to cancel and reschedule the mortgage foreclosure sale because:

1. On ___ this Court entered a Final Judgment of Foreclosure pursuant to which a foreclosure sale was scheduled for _____, 20__.

2. The sale needs to be canceled for the following reason(s):

a. _____ Plaintiff and Defendant are continuing to be involved in loss mitigation;

b. _____ Defendant is negotiating for the sale of the property that is the subject of this matter and Plaintiff wants to allow the Defendant an opportunity to sell the property and pay off the debt that is due and owing to Plaintiff.

c. _____ Defendant has entered into a contract to sell the property that is the subject of this matter and Plaintiff wants to give the Defendant an opportunity to consummate the sale and pay off the debt that is due and owing to Plaintiff.

d. _____ Defendant has filed a Chapter ___ Petition under the Federal Bankruptcy Code;

e. _____ Plaintiff has ordered but has not received a statement of value/appraisal for the property;

f. _____ Plaintiff and Defendant have entered into a Forbearance Agreement;

g. _____ Other

3. If this Court cancels the foreclosure sale, Plaintiff moves that it be rescheduled.

I hereby certify that a copy of the foregoing Motion has been furnished by U.S. mail postage prepaid, facsimile or hand delivery to _____ this _____ day of _____, 20____.

Dated: _____

Signature of Plaintiff
Printed Name: _____
Address: _____
City, State, Zip: _____
Phone: _____
Telefacsimile: _____

Residential Foreclosure Procedures for the 2nd Judicial Circuit of Florida

The following procedures and requirements will take effect on **August 2, 2010**, for all Summary Judgment Motions in residential mortgage foreclosure cases. Please refer to the appropriate county below:

Franklin County

The following procedures and requirements will take effect on **August 2, 2010**, for all Summary Judgment Motions in residential mortgage foreclosure cases for **Franklin County**. Compliance with these procedures and requirements is mandatory.

1. Hearings on Motions for Summary Judgment will be scheduled by contacting the Second Judicial Circuit's Foreclosure Case Scheduler at 850-577-8067 or by email Ina Hawkins. A maximum of 10 cases can be set in 1/2 hour increments.
2. No hearing time may be reserved for summary judgment hearings in foreclosure cases until the motion and required summary judgment evidence are filed with the Clerk, including the Original Note and Mortgage. No pleadings or original documents shall be sent to the Second Judicial Circuit's Foreclosure Case Scheduler or the Judge. The Court will not proceed with the hearing unless the original note and mortgage are provided or an approved bond in the amount of principal and interest claimed is posted.
3. Counsel for Plaintiff must appear in person at the motion for summary judgment hearings. **Telephonic appearance is no longer permitted.**
4. Hearings will take place at: Franklin County Courthouse, 33 Market St, Hearing Room Third Floor, Apalachicola, FL 32320.
5. All cases where the residence is owner-occupied and a pleading has been filed by the owner seeking relief must be mediated first before a hearing on a Motion for Summary Judgment can be set (see Administrative Order 2010-05).
6. Upon confirmation of the hearing date and time, the original Notice of Hearing must be filed with the Franklin County Clerk of Court within 7 days of confirmation and a courtesy copy sent to: Foreclosure Case Scheduler, Leon County Courthouse, 301 South Monroe Street, Room 301-B, Tallahassee, FL 32301.
7. If a Notice of Hearing is not filed with the court within 7 days, the hearing is taken off the calendar.
8. Once set, a hearing can only be canceled by motion using the Motion to Cancel and Reschedule Foreclosure Hearing filed with the clerk, and submitted with a proposed order. Motions to cancel must be made to the Judge assigned to the case, not sent to the Scheduler. Cancellations must be filed at least 5 days in advance, except in the event of an

emergency.

9. All complete mortgage foreclosure summary judgment packets must be received by the scheduler no later than 10 days prior to the scheduled hearing. If complete packets are not received at least 10 days in advance of the hearing, then this will result in cancellation of the hearing. The package shall contain the original proposed final judgment on the Supreme Court mandated form, with no additional language added; an original Notice of Sale; an original Final Disposition Form; and sufficient copies and addressed envelopes with postage attached to serve copies of the originals when entered.
10. The Supreme Court approved Final Judgment, Affidavit of Diligent Search, and Motion to Cancel Foreclosure Sale must be utilized.
11. The minimum time period shall not be applicable to hearings currently scheduled to take place prior to August 15, 2010.
12. Any questions should be directed to Foreclosure Scheduler, Ina Hawkins, at 850-577-8067.

Gadsden County

The following procedures and requirements will take effect on **August 2, 2010**, for all Summary Judgment Motions in residential mortgage foreclosure cases for **Gadsden County**. Compliance with these procedures and requirements is mandatory.

Update 11/9/10:Administrative Order AOSC10-57

1. Hearings on Motions for Summary Judgment will be scheduled by contacting the Second Judicial Circuit's Foreclosure Case Scheduler at 850-577-8067 or by email Ina Hawkins. A maximum of 10 cases can be set in 1/2 hour increments.
2. No hearing time may be reserved for summary judgment hearings in foreclosure cases until the motion and required summary judgment evidence are filed with the Clerk, including the Original Note and Mortgage. No pleadings or original documents shall be sent to the Second Judicial Circuit's Foreclosure Case Scheduler or the Judge. The Court will not proceed with the hearing unless the original note and mortgage are provided or an approved bond in the amount of principal and interest claimed is posted.
3. Counsel for Plaintiff must appear in person at the motion for summary judgment hearings. **Telephonic appearance is no longer permitted.**
4. Hearings will take place at: Guy A. Race Judicial Complex; West Entrance; 13 N Monroe St; Quincy, FL 32351.
5. All cases where the residence is owner-occupied and a pleading has been filed by the owner seeking relief must be mediated first before a hearing on a Motion for Summary Judgment can be set (see
6. Upon confirmation of the hearing date and time, the original Notice of Hearing must be filed with the Gadsden County Clerk of Court within 7 days of confirmation and a courtesy copy sent to: Foreclosure Case Scheduler, Leon County Courthouse, 301 South Monroe Street, Room 301-B, Tallahassee, FL 32301.
7. Once set, a hearing can only be canceled by motion using the Motion to Cancel and Reschedule Foreclosure Hearing filed with the clerk, and submitted with a proposed order. Motions to cancel must be made to the Judge assigned to the case, not sent to the Scheduler. Cancellations must be filed at least 5 days in advance, except in the event of an emergency.

8. All complete mortgage foreclosure summary judgment packets must be received by the scheduler no later than 10 days prior to the scheduled hearing. If complete packets are not received at least 10 days in advance of the hearing, then this will result in cancellation of the hearing. The package shall contain the original proposed final judgment on the Supreme Court mandated form, with no additional language added; an original Notice of Sale; an original Final Disposition Form; and sufficient copies and addressed envelopes with postage attached to serve copies of the originals when entered.
9. The Supreme Court approved Final Judgment, Affidavit of Diligent Search, and Motion to Cancel Foreclosure Sale must be utilized.
10. The minimum time period shall not be applicable to hearings currently scheduled to take place prior to August 15, 2010.
11. Any questions should be directed to Foreclosure Scheduler, Ina Hawkins, at 850-577-8067.

Jefferson County

The following procedures and requirements will take effect on **August 2, 2010**, for all Summary Judgment Motions in residential mortgage foreclosure cases for **Jefferson County**. Compliance with these procedures and requirements is mandatory.

1. Hearings on Motions for Summary Judgment will be scheduled by contacting the Second Judicial Circuit's Foreclosure Case Scheduler at 850-577-8067 or by email Ina Hawkins. A maximum of 10 cases can be set in 1/2 hour increments.
2. No hearing time may be reserved for summary judgment hearings in foreclosure cases until the motion and required summary judgment evidence are filed with the Clerk, including the Original Note and Mortgage. No pleadings or original documents shall be sent to the Second Judicial Circuit's Foreclosure Case Scheduler or the Judge. The Court will not proceed with the hearing unless the original note and mortgage are provided or an approved bond in the amount of principal and interest claimed is posted.
3. Counsel for Plaintiff must appear in person at the motion for summary judgment hearings. **Telephonic appearance is no longer permitted.**
4. Hearings will take place at: Jefferson County Courthouse, Room 22, 1 Courthouse Circle, Monticello, FL 32344.
5. All cases where the residence is owner-occupied and a pleading has been filed by the owner seeking relief must be mediated first before a hearing on a Motion for Summary Judgment can be set (see
6. Upon confirmation of the hearing date and time, the original Notice of Hearing must be filed with the Jefferson County Clerk of Court within 7 days of confirmation and a courtesy copy sent to: Foreclosure Case Scheduler, Leon County Courthouse, 301 South Monroe Street, Room 301-B, Tallahassee, FL 32301.
7. Once set, a hearing can only be canceled by motion using the Motion to Cancel and Reschedule Foreclosure Hearing filed with the clerk, and submitted with a proposed order. Motions to cancel must be made to the Judge assigned to the case, not sent to the Scheduler. Cancellations must be filed at least 5 days in advance, except in the event of an emergency.
8. All complete mortgage foreclosure summary judgment packets must be received by the scheduler no later than 10 days prior to the scheduled hearing. If complete packets are not received at least 10 days in advance of the hearing, then this will result in cancellation of the

hearing. The package shall contain the original proposed final judgment on the Supreme Court mandated form, with no additional language added; an original Notice of Sale; an original Final Disposition Form; and sufficient copies and addressed envelopes with postage attached to serve copies of the originals when entered.

9. The Supreme Court approved Final Judgment, Affidavit of Diligent Search, and Motion to Cancel Foreclosure Sale must be utilized.
10. The minimum time period shall not be applicable to hearings currently scheduled to take place prior to August 15, 2010.
11. Any questions should be directed to Foreclosure Scheduler, Ina Hawkins, at 850-577-8067.

Leon County

The following procedures and requirements will take effect on **August 2, 2010**, for all Summary Judgment Motions in residential mortgage foreclosure cases for **Leon County**. Compliance with these procedures and requirements is mandatory.

1. Hearings on Motions for Summary Judgment will be scheduled by contacting the Second Judicial Circuit's Foreclosure Case Scheduler at 850-577-8067 or by email Ina Hawkins. A maximum of 10 cases can be set in 1/2 hour increments.
2. No hearing time may be reserved for summary judgment hearings in foreclosure cases until the motion and required summary judgment evidence are filed with the Clerk, including the Original Note and Mortgage. No pleadings or original documents shall be sent to the Second Judicial Circuit's Foreclosure Case Scheduler or the Judge. The Court will not proceed with the hearing unless the original note and mortgage are provided or an approved bond in the amount of principal and interest claimed is posted.
3. Counsel for Plaintiff must appear in person at the motion for summary judgment hearings. **Telephonic appearance is no longer permitted.**
4. Hearings will take place at: Leon County Courthouse, 301 South Monroe Street, Room 301-B, Tallahassee, FL 32301.
5. All cases where the residence is owner-occupied and a pleading has been filed by the owner seeking relief must be mediated first before a hearing on a Motion for Summary Judgment can be set (see Administrative Order 2010-05).
6. Upon confirmation of the hearing date and time, the original Notice of Hearing must be filed with the Clerk of Court within 7 days of confirmation and a courtesy copy sent to: Foreclosure Case Scheduler, Leon County Courthouse, 301 South Monroe Street, Room 301-B, Tallahassee, FL 32301.
7. If a Notice of Hearing is not filed with the court within 7 days, the hearing is taken off the calendar.
8. Once set, a hearing can only be canceled by motion using the Motion to Cancel and Reschedule Foreclosure Hearing filed with the clerk, and submitted with a proposed order. Motions to cancel must be made to the Judge assigned to the case, not sent to the Scheduler. Cancellations must be filed at least 5 days in advance, except in the event of an emergency.
9. All complete mortgage foreclosure summary judgment packets must be received by the scheduler no later than 10 days prior to the scheduled hearing. If complete packets are not received at least 10 days in advance of the hearing, then this will result in cancellation of the hearing. The package shall contain the original proposed final judgment on the Supreme

Court mandated form, with no additional language added; an original Notice of Sale; an original Final Disposition Form; and sufficient copies and addressed envelopes with postage attached to serve copies of the originals when entered.

10. The Supreme Court approved Final Judgment, Affidavit of Diligent Search, and Motion to Cancel Foreclosure Sale must be utilized.
11. The minimum time period shall not be applicable to hearings currently scheduled to take place prior to August 15, 2010.
12. Any questions should be directed to Foreclosure Scheduler, Ina Hawkins, at 850-577-8067.

Liberty County

The following procedures and requirements will take effect on **August 2, 2010**, for all Summary Judgment Motions in residential mortgage foreclosure cases for **Liberty County**. Compliance with these procedures and requirements is mandatory.

1. Hearings on Motions for Summary Judgment will be scheduled by contacting the Second Judicial Circuit's Foreclosure Case Scheduler at 850-577-8067 or by email Ina Hawkins. A maximum of 10 cases can be set in 1/2 hour increments.
2. No hearing time may be reserved for summary judgment hearings in foreclosure cases until the motion and required summary judgment evidence are filed with the Clerk, including the Original Note and Mortgage. No pleadings or original documents shall be sent to the Second Judicial Circuit's Foreclosure Case Scheduler or the Judge. The Court will not proceed with the hearing unless the original note and mortgage are provided or an approved bond in the amount of principal and interest claimed is posted.
3. Counsel for Plaintiff must appear in person at the motion for summary judgment hearings. **Telephonic appearance is no longer permitted.**
4. Hearings will take place at: Liberty County Courthouse, 10818 NW State Rd 20, Bristol, FL 32321.
5. All cases where the residence is owner-occupied and a pleading has been filed by the owner seeking relief must be mediated first before a hearing on a Motion for Summary Judgment can be set (see
6. Upon confirmation of the hearing date and time, the original Notice of Hearing must be filed with the Liberty County Clerk of Court within 7 days of confirmation and a courtesy copy sent to: Foreclosure Case Scheduler, Leon County Courthouse, 301 South Monroe Street, Room 301-B, Tallahassee, FL 32301.
7. Once set, a hearing can only be canceled by motion using the Motion to Cancel and Reschedule Foreclosure Hearing filed with the clerk, and submitted with a proposed order. Motions to cancel must be made to the Judge assigned to the case, not sent to the Scheduler. Cancellations must be filed at least 5 days in advance, except in the event of an emergency.
8. All complete mortgage foreclosure summary judgment packets must be received by the scheduler no later than 10 days prior to the scheduled hearing. If complete packets are not received at least 10 days in advance of the hearing, then this will result in cancellation of the hearing. The package shall contain the original proposed final judgment on the Supreme Court mandated form, with no additional language added; an original Notice of Sale; an original Final Disposition Form; and sufficient copies and addressed envelopes with postage attached to serve copies of the originals when entered.

9. The Supreme Court approved Final Judgment, Affidavit of Diligent Search, and Motion to Cancel Foreclosure Sale must be utilized.
10. The minimum time period shall not be applicable to hearings currently scheduled to take place prior to August 15, 2010.
11. Any questions should be directed to Foreclosure Scheduler, Ina Hawkins, at 850-577-8067.

Wakulla County

The following procedures will take effect immediately, for all Summary Judgment Motions in residential mortgage foreclosure cases for Wakulla County.

- All foreclosure hearings, including Motions for Summary Judgment, will be scheduled by contacting Judge Sauls' judicial assistant, Deanna Gravius, at 850-926-0917.
- Hearings will take place at: The Wakulla County Community Center, Shadeville Road and Trice Lane, Crawfordville, Florida 32327.
- Please adhere to the dates and times provided by Deanna Gravius at the time of scheduling.

[Accessibility](#) | [Privacy Policy](#) | [Sitemap](#)

From: "Natalie Bedonie" <nbedonie@ausley.com>
To: <underwoodl@leoncountyfl.gov>
Date: 11/17/2010 11:32 AM
Subject: Capital City Bank v. Pecan Hills Subdivision, et al
Attachments: Notice of Foreclosure Sale - Pecan.pdf; Order Rescheduling Foreclosure Sale - Pecan.pdf; Motion to Reschedule Foreclosure Sale - Pecan.pdf

CC: "Jason Gonzalez" <jgonzalez@ausley.com>
Lynn,

Per our conversation, attached you will find the Motion to Reschedule Foreclosure Sale, the Order to Reschedule Foreclosure Sale and the Notice of Foreclosure Sale in the above referenced matter. These documents were provided to the Jefferson County Clerk of Court on November 10, 2010. Should you have any questions, please feel free to contact me at the number below.

Thank you,

Natalie Bedonie
Assistant to Jason B. Gonzalez
Ausley & McMullen, P.A.
123 South Calhoun Street
P.O. Box 391 (32302)
Tallahassee, FL 32301
Direct Line: (850) 425-5338
Facsimile: (850) 222-7560
E-mail: nbedonie@ausley.com

PLEASE NOTE:

1. The foregoing is not intended to be a legally binding or legally effective electronic signature.
2. This message is being sent by or on behalf of a lawyer. It is intended exclusively for the individual(s) or entity(ies) to which it is addressed. This message may contain information that is privileged, proprietary, confidential, or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it, electronically, verbally or in writing. If you have received this message in error, please notify the sender immediately by email and delete all copies of the message. I apologize for any inconvenience this may have caused. Thank you.

Lynn Underwood - RE: Are foreclosure summary final judgment allowed by phone?

From: "Gabriela Sanchez"
To: "Lynn Underwood"
Date: 11/15/2010 10:19 AM
Subject: RE: Are foreclosure summary final judgment allowed by phone?

I'm sorry, can you please confirm your judges name?

Thank you,
Gabriela Sanchez
Hearing Department Supervisor
Kahane & Associates, P.A.
8201 Peters Road, Suite 3000
Plantation FL 33324
Tele: (954) 356-1560 Ext 2243
Fax: (954) 382-5380
Judges Only (866) 655-5516
E-mail: gsanchez@kahaneandassociates.com

-----Original Message-----

From: Lynn Underwood [mailto:UnderwoodL@leoncountyfl.gov]
Sent: Monday, November 15, 2010 8:50 AM
To: Gabriela Sanchez
Subject: Re: Are foreclosure summary final judgment allowed by phone?

Usually it is sent in a few days before hearing. If the hearing is on the ex parte calendar then it can be by phone. Otherwise you need to file a motion and a proposed order. Yes, we need a copy of the notice of hearing.

Lynn

>>> "Gabriela Sanchez" <gsanchez@kahaneandassociates.com> 11/13/2010 1:47 PM >>>
Please confirm if proposed final judgment how many days in advanced?
Judge requires copy of the notice of hearing & motion
Foreclosure hearings allowed by phone?

Thank you,
Gabriela Sanchez
Hearing Department Supervisor
Kahane & Associates, P.A.
8201 Peters Road, Suite 3000
Plantation FL 33324
Tele: (954) 356-1560 Ext 2243
Fax: (954) 382-5380
Judges Only (866) 655-5516
E-mail: gsanchez@kahaneandassociates.com

Lynn Underwood - Are foreclosure summary final judgment allowed by phone?

From: "Gabriela Sanchez"
To:
Date: 11/13/2010 1:48 PM
Subject: Are foreclosure summary final judgment allowed by phone?

Please confirm if proposed final judgment how many days in advanced?
Judge requires copy of the notice of hearing & motion
Foreclosure hearings allowed by phone?

Thank you,
Gabriela Sanchez
Hearing Department Supervisor
Kahane & Associates, P.A.
8201 Peters Road, Suite 3000
Plantation FL 33324
Tele: (954) 356-1560 Ext 2243
Fax: (954) 382-5380
Judges Only (866) 655-5516
E-mail: gsanchez@kahaneandassociates.com

Lynn Underwood - Foreclosure Sale Cancellation

From: "Sherry Sears"
To:
Date: 10/20/2010 2:01 PM
Subject: Foreclosure Sale Cancellation
Attachments:

Lynn,

Please find attached the motion and order of cancellation in case 10-86-CA.

Thank you,

Sherry Sears
Deputy Clerk
Jefferson County
Clerk of Courts
850-342-0218 ext 228

Lynn Underwood - Request for OSC HRG in Jefferson County

From: "Patti Stewart, Law Offices of Daniel C. Consuegra"
To:
Date: 10/20/2010 12:56 PM
Subject: Request for OSC HRG in Jefferson County

Hello Lynn,

I would like to request a 5-10 minute Order to Show Cause hearing for a replevin case in Jefferson County beginning December 3 or after.

2010 295 CA
21st Mortgage v John R. Thompson
Attorney for Plaintiff, Matt King (would like to appear by phone)
Defendants Pro Se at this time

Do you require a motion/order to appear by phone?

Thank you,

Patti Stewart, Legal Assistant
Law Offices of Daniel C. Consuegra, P.L.
9204 King Palm Drive
Tampa, Florida 33619-1328
Phone: (813) 915-8660 Ext. 117
Fax: (813) 915-0559

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Target Backlog Reduction
Foreclosure and Economic Recovery Funding
Backlog Cases
FY 2006/07 through Estimated FY 2010/11

Circuit	Estimated Real Property/ Mortgage Foreclosure Backlog Cases	62% of Estimated Real Property/ Mortgage Foreclosure Backlog Cases
1	12,960	8,035
2	4,385	2,719
3	1,325	822
4	21,523	13,344
5	19,931	12,357
6	39,394	24,424
7	21,585	13,383
8	2,575	1,597
9	50,600	31,372
10	12,979	8,047
11	87,955	54,532
12	25,557	15,845
13	38,180	23,672
14	4,634	2,873
15	63,402	39,309
16	2,671	1,656
17	57,514	35,659
18	31,052	19,252
19	20,717	12,844
20	41,005	25,423
Total	559,945	347,165

IN THE SECOND JUDICIAL CIRCUIT OF FLORIDA

OFFICE OF THE CHIEF JUDGE

ADMINISTRATIVE ORDER 2010-09

IN RE: MORTGAGE FORECLOSURE SUMMARY JUDGMENT PROCEDURES

WHEREAS, pursuant to Article V, section 2(d) of the Florida Constitution, and section 43.26, Florida Statutes, the chief judge of each judicial circuit is charged with the authority and power to do everything necessary to promote the prompt and efficient administration of justice, and rule 2.215(b)(3), Florida Rules of Judicial Administration, mandates the chief judge to “develop an administrative plan for the efficient and proper administration of all courts within the circuit;”

WHEREAS, residential mortgage foreclosure case filings have increased substantially in the Second Judicial Circuit, and state and county budget constraints have limited the ability of the courts in the Second Judicial Circuit to manage these cases in a timely manner; and

WHEREAS, the volume of cases set for summary judgment in foreclosure proceedings requires a uniform procedure to assist the judges in expeditiously hearing the motions

IT IS THEREFORE

ORDERED:

1. All complete mortgage foreclosure summary judgment packets must be received by the Second Judicial Circuit’s Foreclosure Case Scheduler, Ina Hawkins, no later than **10 days PRIOR** to the scheduled hearing. If complete packets are not received at least 10 days in advance of the hearing, the case will be **DISMISSED** without prejudice.
2. Upon confirmation of the hearing date and time, the original Notice of Hearing must be filed with the Clerk of Court within **7 days** of confirmation and a courtesy copy sent to: Foreclosure Case Scheduler, Leon County Courthouse, 301 South Monroe Street, Room 301-B, Tallahassee, FL 32301. If a Notice of Hearing is not filed with the court within 7 days, the hearing is taken off the calendar.
3. Once set, a hearing can only be canceled by motion using the “Motion to Cancel and Reschedule Foreclosure Hearing” found on the court’s website, filed with the clerk, and submitted with a proposed order. Motions to cancel must be made to the Judge assigned to the case, not sent to the Scheduler. Cancellations must be filed at least 5 days in advance, except in the event of an emergency.
4. Failure to appear at a scheduled hearing will result in **DISMISSAL** of the case.

5. Appearance by telephone is not permitted.

DONE and ORDERED in Chambers at Tallahassee, Leon County, Florida this
_____ day of _____, 2010.

CHARLES A. FRANCIS
Chief Circuit Judge

cc: All Circuit and County Judges, Second Judicial Circuit
All Clerks of the Circuit Court, Second Judicial Circuit
State Attorney, Second Judicial Circuit
Public Defender, Second Judicial Circuit

From: Cheri-Ann Granston
To: Francis, Charles
Date: 9/14/2010 11:19 AM
Subject: Administrative Order
Attachments: Administrative Order.doc

Good Morning Judge Francis:

Attached is the administrative order you asked me to prepare regarding dismissal of cases for failure to provide the packets 10 days prior to the hearing. Please review and advise.

Thanks,

Cheri-ann Granston

IN THE SECOND JUDICIAL CIRCUIT OF
FLORIDA

OFFICE OF THE CHIEF JUDGE

ADMINISTRATIVE ORDER 2010-05
FIRST AMENDMENT

IN RE: AMENDMENTS TO CASE MANAGEMENT OF RESIDENTIAL FORECLOSURE
CASES AND MANDATORY REFERRAL OF MORTGAGE FORECLOSURE CASES
INVOLVING HOMESTEAD RESIDENCES TO MEDIATION

WHEREAS, the Supreme Court of Florida has issued AOSC10-57 entitled Guidance Concerning Managed Mediation Programs For Residential Mortgage Foreclosure Cases which mandated certain provisions of their Model Order which was adopted by the Second Judicial Circuit of Florida in the form of AO 2010-05, and

WHEREAS, the Second Judicial Circuit, in compliance with AOSC10-57 has required certain amendments to AO 2010-05,

IT IS THEREFORE

ORDERED: that Sections Recitals, B2, C, and G of Administrative Order 10-05 are amended to read as follows:

- A. Section B2: Referral to Mediation shall be amended to the following language:

This administrative order constitutes a formal referral to mediation pursuant to the Florida Rules of Civil Procedure in actions involving a mortgage foreclosure of a homestead residence. Additional orders of referral are not necessary; however, the presiding judge may execute additional orders of referral, in his or her discretion.

The plaintiff and borrower are deemed to have stipulated to mediation by a mediator assigned by the Program Manager unless pursuant to rule 1.720(f), Florida Rules of Civil Procedure, the plaintiff and borrower file a written stipulation, based upon a reasonable understanding of the impact of waiving mediation, choosing not to participate in the RMFM Program.

Referral to the RMFM Program is for administration and management of the mediation process and assignment of a Supreme Court of Florida certified circuit civil mediation, who has been trained in mediation residential mortgage foreclosure actions, and who has agreed to be on the panel of available certified circuit civil mediators. Mediators used in the RMFM Program shall be trained in accordance with the standards stated in Exhibit 12 attached to AOSC09-54 and or AOSC 10-57. Mediation through the RMFM Program shall be conducted in accordance with Florida Rules of Civil Procedure and Florida Rules for Certified and Court-Appointed Mediators.

- B. All references to the word “impasse” in AO 2010-05 shall be changed to the words “no agreement”.
- C. Paragraph G: shall be amended to the following language:

G. List of Participating Mediators and Rotation of Mediators.

1. The Program Manager shall post on its website the list of Supreme Court of Florida certified mediators it will use to implement the RMFM Program. The mediators to be utilized may either be

individuals or law firms. In the event a law firm is appointed, it shall select a mediator who is qualified under the terms of this order to be the mediator of the cases that firm receives in the rotation. The criteria to be used in selecting mediators shall be those criteria set forth in Paragraph C2, along with experience, education, training, merit, availability, and diversity. The selections shall be at the discretion of the Program manager.

2. The Program Manager shall also state in writing the procedure, subject to the approval by the chief judge, the program will use to rotate the appointment of mediators. If a law firm is appointed, it shall be construed to satisfy the rotation requirement for all members of the firm. The RMFM Program shall require the use of Supreme Court Civil Circuit certified mediators who have been specially trained in the manner set forth in Exhibit 12 attached to AOSC09-54 and are incorporated by reference herein, and made a part hereof.

3. The list presenters of training programs specifically qualified to conduct such trainings in the Second Judicial Circuit of Florida, include, but are not limited to: Christopher Shulman, Esq., Gregory Firestone, PhD, and David A. Wolfson, Esq. Other training providers who desire that their programs qualify under Exhibit 12 attached to AOSC09-54 and are incorporated by reference herein and made a part hereof shall submit an application to the Program Manager along with their program materials for determination as to whether the program qualifies under the provisions of Exhibit 12.

4. Individuals qualified to mediate mortgage foreclosure cases, shall be Florida Supreme Court certified in Circuit Civil, who have been trained to mediate mortgage foreclosure cases, and who reflect the diversity of the community in which it operates. Assignment of mediators shall be on a rotation basis that fairly spreads work throughout the pool of mediators working in the RMFM Program, unless the parties mutually agree on a specific mediator or the case requires a particular skill on the part of the mediator.

D. Exhibit 9 entitled "Report of Mediator" attached to AOSC 09-54 and AO 2010-05 shall be amended to the following language:

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR _____ COUNTY, FLORIDA

CIVIL CASE NUMBER: _____

vs.

_____ /

MEDIATOR'S REPORT
(RMFM Program)

Due within 10 days of Mediation

Pursuant to the Court's Order, a Mediation Conference was conducted by Florida Supreme Court Certified Circuit Court Mediator _____ on _____ day _____ date.

The following were physically present at the Mediation Conference

- a) Plaintiff's Representative _____, and
- b) Plaintiff's Attorney _____.
- c) The Defendant(s) _____ and
- d) The Defendant(s) Attorney(s) _____
and _____.

e) Others physically present: _____

Plaintiff's representative present by electronic equipment: _____

The result of the Mediation Conference is as follows:

_____ The parties reached an agreement. [] Partial [] Full

_____ The agreement was [] reduced to writing and signed by the parties [] Transcribed

_____ There was no agreement.

_____ The mediation was ADJOURNED to _____ (date and time)

Mediator Signature _____

A COPY OF THE MOST RECENTLY FILED Form A is attached to this report for the court's use.

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to Plaintiff and Defendant(s) this _____ day of _____, 201____.

The Tallahassee Bar, Inc.

By: _____

Program Manager

301 S. Monroe St., Room 108

Tallahassee, Florida 32301.

Tel: 850-222-3232 ext. 304

RMFMprogram@tallahasseebar.org

From: David Wolfson
To: Francis, Charles
Date: 11/9/2010 8:34 AM
Subject: AO 10-05
Attachments: Amendments to AO 2010-05.doc

Good morning, Your Honor: Attached is my draft of the amendments to AO 2010-05 which I believes brings us into compliance with SCAO 10-57. The Tallahassee Bar and I have set a training session to inform our mediators of the changes. If you will recall, we did not include the language in the recitals because they didn't apply. I have included them in case you wish to retain them. I have a 9:30 case in Gadsden to which I was specially appointed but will be back in a few hours. If you want me to rescind the old order and do another, I can do it this afternoon. I will take the point on notifications. Can I get a few minutes with you this afternoon, I have some issues.

From: David Wolfson
To: Francis, Charles
Date: 11/8/2010 9:12 AM
Subject: AO10-57

We need to amend a couple of things. "A number of circuits have imposed geographic, residency, experience or Florida Bar membership eligibility requirements on mediators participating in the ...programs. " AO09-54 Stated that certified circuit court mediators specially trained in residential mortgage foreclosures are eligible. Any requirements that exceed those stated in AOSC09-54 are not authorized. Also forms. Otherwise we're good to go.

Cases Cancelled by Plaintiff Before Hearing (August-October)

Case No.	Case Style	Plaintiff's Counsel	Canceled Hearing Date	# of Cases set for hearing
2010 CA 0521	Bank of America v. Lawrence	Marshall Watson, P.A.	Aug. 9	32
2010 CA 0678	Citi Mortgage v. Garcia	Shapiro & Fishman	Aug. 9	32
2009 CA 3415	Farmers & Merchants v. Om Shanti Om, LLC	Bowden & Group	Sept. 2	25
2009 CA 4678	Wakulla Bank v. Fraiser	Mowery Law Group	Sept. 2	25
2009 CA 3829	Flagstar Bank v. Deas	Ben, Ezra, & Katz	Sept. 2	25
2007 CA 0057	Bank of America v. Johnson		Sept. 8	28
2010 CA 0449	PNC Bank v. Bently	Shapiro & Fishman	Sept. 8	28
2009 CA 3961	PHH Bank v. Davidson	Shapiro & Fishman	Sept. 8	28
2009 CA 1789	American Home v. Ogburn	Marshall Watson, P.A.	Sept. 8	28
2007 CA 3015	Citimortgage v. Colston	Marshall Watson, P.A.	Sept. 8	28
2009 CA 4873	Suntrust Bank v. Daniels	Marshall Watson, P.A.	Sept. 8	28
2008 CA 3588	US Bank v. Davis	Marshall Watson, P.A.	Sept. 8	28
2008 CA 1829	US Bank v. Davis	David J. Stern	Sept. 8	28
2009 CA 1713	Branch Bank v. Carruthers	Spear & Hoffman	Sept. 8	28
2008 CA 2850	Deutsche Bank v. Harg	David J. Stern	Sept. 8	28
2010 CA 1174	Thompson v. Moore	STSM Law Firm	Sept. 8	28
2008 CA 2852	Branch Bank v. Stiles	Spear & Hoffman	Sept. 8	28

2009 CA 3952	Deutsche Bank v. King	Spear & Hoffman	Sept. 8	28
2009 CA 1985	H&R Block Bank v. Madio	Spear & Hoffman	Sept. 8	28
2010 CA 0025	Suntrust Bank v. Selover	Ben, Ezra, & Katz	Sept. 15	40
2008 CA 2261	Flagstar Bank v. Krasovetz	Ben, Ezra, & Katz	Sept. 15	40
2010 CA 0215	DLJ Mortgage Capital v. Larry	Ben, Ezra, & Katz	Sept. 15	40
2009 CA 0721	Flagstar v. Franklin	Ben, Ezra, & Katz	Sept. 15	40
2010 CA 0033	Bank of NY v. Swindle	David J. Stern	Sept. 15	40
2009 CA 3408	Bank of NY v. Palmer	Smith, Hiatt, & Diaz	Sept. 15	40
2009 CA 0766	Wachovia v. Waite	Smith, Hiatt, & Diaz	Sept. 15	40
2009 CA 1713	Branch v. Carruthers	Spear & Hoffman	Sept. 15	40
2009 CA 1796	Wells Fargo v. Krause	Kahane & Assoc.	Sept. 22	54
2009 CA 2139	US Bank v. Olayiwola	David J. Stern	Sept. 22	54
2009 CA 3757	Bac Homes v. Young	David J. Stern	Sept. 22	54
2007 CA 2473	Indymac v. Williams	David J. Stern	Sept. 22	54
2009 CA 3340	Aurora Loans v. Tait	David J. Stern	Sept. 22	54
2009 CA 1853	Citimortgage v. Wever	David J. Stern	Sept. 22	54
2010 CA 0257	US Bank v. Jones	David J. Stern	Sept. 22	54
2007 CA 1891	Bank of America v. Libby	David J. Stern	Sept. 22	54
2009 CA 4975	BAC Homes v. Nall	David J. Stern	Sept. 22	54
2009 CA 4966	Farmers & Merchants v. Delao	Bowden & Group	Sept. 22	54
2009 CA 3702	BAC Home v. Stewart	David J. Stern	Sept. 22	54
2010 CA 0439	Aurora Bank v. McClary	David J. Stern	Sept. 22	54
2009 CA 4351	Chase Bank v. Savizon	Kass Schuler	Sept. 22	54
2009 CA 4918	US Bank v. Leath	Douglas Zahm	Sept. 22	54

2008 CA 0915	US Bank v. Wah Wah	Marshall Watson, P.A.	Sept. 30	32
2008 CA 1984	Aurora Bank v. Claudio	Marshall Watson, P.A.	Sept. 30	32
2009 CA 2591	Aurora Loans v. Davis	David J. Stern	Sept. 30	32
2009 CA 1796	Wells Fargo v. Krause	Kahane & Assoc.	Sept. 30	32
2009 CA 1592	JP Morgan v. Le	Marshall Watson, P.A.	Oct. 7	59
2009 CA 3340	Aurora Loans v. Tait	David J. Stern	Oct. 7	59
2009 CA 3044	US Bank v. Nichols	Douglas Zahm	Oct. 7	59
2007 CA 3588	HSB Mortgage v. Cooper	Marshall Watson, P.A.	Oct. 7	59
2010 CA 0681	Wells Fargo v. Graddick	FL Default	Oct. 7	59
2010 CA 0439	Aurora Bank v. McClary	David J. Stern	Oct. 7	59
2009 CA 1249	BAC Home Loans v. Anderson	David J. Stern	Oct. 12	39
2009 CA 0858	Bac Home Loans v. Davis	David J. Stern	Oct. 12	39
2009 CA 1204	Bac Home Loans v. Saucier	David J. Stern	Oct. 12	39
2009 CA 1243	Bac Home Loans v. Smith	David J. Stern	Oct. 12	39
2009 CA 1078	Bac Home Loans v. Serrano	David J. Stern	Oct. 12	39
2008 CA 0727	US Bank v. Milton	FL Default	Oct. 12	39
2008 CA 1681	Chase v. Dhanji	FL Default	Oct. 14	40
2010 CA 1084	Bac Home Loans v. Farris	FL Default	Oct. 14	40
2009 CA 4815	JP Morgan v. Whiting	FL Default	Oct. 14	40
2009 CA 3912	Chase Home v. Lane	FL Default	Oct. 14	40
2010 CA 1749	JP Morgan v. Huynh	FL Default	Oct. 14	40
2010 CA 0025	Suntrust v. Selover	Ben, Ezra, & Katz	Oct. 21	38
2010 CA 1343	Suntrust v. Salie	Ben, Ezra, & Katz	Oct. 21	38
2009 CA 1093	Deutsche v. Lamm	Shapiro & Fishman	Oct. 21	38

2009 CA 1945	Wachovia v. Johnson	Shapiro & Fishman	Oct. 21	38
2010 CA 0348	Aurora Loans v. Ropoccio	Morris, Hardwick, Schneider	Oct. 21	38
2007 CA 2213	Citimortgage v. Najm	FL Default	Oct. 21	38
2009 CA 4890	Citimortgage v. Ayer	FL Default	Oct. 21	38
2010 CA 1531	Chase Bank v. Boreland	FL Default	Oct. 21	38
2010 CA 1816	Bank of America v. Ettore	FL Default	Oct. 21	38
2008 CA 0085	Deutsche Bank v. Hair	Butler & Hosch	SEPT. 2	25
2010 CA 0250	BB & T v. Waldon	Ben-Ezra & Katz	SEPT. 2	25
2010 CA 1433	Deutsche Bank v. Brodka	Ben-Ezra & Katz	SEPT. 2	25
2008 CA 3829	Flagstar Bank v. Deas	Ben-Ezra & Katz	SEPT. 2	25
2008 CA 2805	Deutsche Bank v. Hart	David J. Stern	SEPT. 2	
2008 CA 3258	Bank Of NY v. Frazier	David J. Stern	SEPT. 2	
2008 CA 1882	National City v. Poole	David J. Stern	SEPT. 2	
2007 CA 3124	US Bank v. Lawson	David J. Stern	SEPT. 2	
2009 CA 2835	BAC Home Loans v. Narezo	David J. Stern	SEPT. 2	
2009 CA 1064	J P Morgan v. Patel	Ben-Ezra & Katz	SEPT. 8	
2009 CA 0698	Deutsche Bank v. Manausa	Ben-Ezra & Katz	SEPT. 8	
2008 CA 1235	Suntrust v. Robertson	Ben-Ezra & Katz	SEPT. 8	
2008 CA 1624	Bank of America v. Endicott	David J. Stern	SEPT. 8	
2009 CA 2386	Aurora Loans v. Miller	David J. Stern	SEPT. 8	
2007 CA 3640	HSBC v. Inwang	Marshall Watson, P.A.	SEPT. 15	
2008 CA 3258	Bank Of NY v. Frazier	David J. Stern	SEPT. 15	
2009 CA 3403	Wells Fargo v. Long	David J. Stern	SEPT. 15	
2009 CA 3176	US Bank v. Lanier	David J. Stern	SEPT. 15	

2009 CA 4976	BAC Home Loans v. Leon	David J. Stern	SEPT. 15	
2010 CA 0033	Bank of NY v. Swindle	David J. Stern	SEPT. 15	
2010 CA 0510	Wells Fargo v. Huynh	Ben-Ezra & Katz	SEPT. 22	
2010 CA 0657	US Bank v. Kasza	Shapiro & Fishman	SEPT. 22	
2009 CA 2496	US Bank v. Cherpa	David J. Stern	SEPT. 22	
2009 CA 2372	US Bank v. Walsh	David J. Stern	SEPT. 22	
2007 CA 1891	Bank of America v. Libby	David J. Stern	SEPT. 22	
2008 CA 4099	GMAC v. Graham	FL Default	SEPT. 22	
2008 CA 3242	Wells Fargo v. Wilkinson	FL Default	SEPT. 22	
2010 CA 0679	BAC Home Loan v. Guzman	FL Default	SEPT. 22	
2010 CA 0632	Bank of America v. Remien	FL Default	SEPT. 22	
2009 CA 4921	Wells Fargo v. Gerety	FL Default	SEPT. 22	
2009 CA 4918	US Bank v. Leath	Douglas Zahm	SEPT. 22	
2009 CA 3757	Countrywide v. Young	David J. Stern		
2009 CA 1853	Citi Mortgage v. Wever	David J. Stern		
2009 CA 2591	Aurora v. Davis	David J. Stern		
2009 CA 4068	Suntrust v. Douwah	David J. Stern		
2009 CA 1050	Citi Mortgage v. Dean	David J. Stern		
2009 CA 1944	Suntrust v. Deng	David J. Stern		
2009 CA 0870	Wells Fargo v. Sadberry	FL Default		
2009 CA 0054	Wells Fargo v. Hilinski	FL Default		
2009 CA 0783	Wells Fargo v. Butt	FL Default		
2010 CA 0166	Wachovia Bank v. McCalla	FL Default		
2010 CA 0350	US Bank v. Gaddis	FL Default		

2010 CA 2865	Wells Fargo v. Powis	FL Default		
2010 CA 2948	Wells Fargo v. Higgins	FL Default		
2008 CA 2548	Financial Freedom v. Thurman	Butler & Hosch		
2009 CA 2867	American Home v. Boucher	Ben-Ezra & Katz		
2008 CA 1943	National City v. Dewolf	David J. Stern		
2008 CA 2094	Citi Mmortgage v. Dicus	David J. Stern		
2009 CA 1944	Suntrust Bank v. Deng	David J. Stern		
2009 CA 0332	Suntrust Bank v. Doukwah	David J. Stern		
2009 CA 2841	Suntrust Bank v. Moore	Marshall Watson, P.A.		
2009 CA 0156	Suntrust Bank v. Mauldin	Marshall Watson, P.A.		
2009 CA 0551	Suntrust Bank v. Salie	Marshall Watson, P.A.		
2010 CA 0187	Suntrust Bank v. Noel	Marshall Watson, P.A.		
2009 CA 0123	Chase Bank v. Beiagini	Marshall Watson, P.A.		
2009 CA 1178		Marshall Watson, P.A.		
2009 CA 3515		Marshall Watson, P.A.		
2010 CA 0060		Marshall Watson, P.A.		
2008 CA 1606		Marshall Watson, P.A.		
2008 CA 3411		Marshall Watson, P.A.		
2008 CA 3633		Marshall Watson, P.A.		
2008 CA 2328		Marshall Watson, P.A.		
2009 CA 1256		Marshall Watson, P.A.		
2009 CA 0367	Kondour Capital v. Lyons	Florida Foreclosure		
2008 CA 1193	Liquidation Properties v. Mitchell	Florida Foreclosure		
2009 CA 0556	Bank of America v. Campagna	FL Default		

2010 CA 0070	BAC Home Loans v. Allmond	FL Default		
2009 CA 0405	Residential Funds v. Williams	David J. Stern		

From: John Cooper
To: Francis, Charles
Date: 11/1/2010 12:01 PM
Subject: Case Management Issues

Charlie, I have started dlopping some mortgage foreclosure files that Matt identified about a month ago. What I have discovered is that it appears that at least this category of files have not been dlopped since Crusoe was here.

I have asked Pam Carter at the clerk's office to see if she can get me a list of the mortgage foreclosure files so that we can get a handle on how many files we have. Also, I am trying to figure out if there is a general dlop program over here so I can do a through file review on all the civil. It appears there may be such a program, but I have been unable to make it work or to print any reports from the Clerk's computer access. I have a call in to the Clerk's IT guy to see if we can get this straightened out.

If no such program exists, I am hesitant to ask the Clerk to spend any funds at this time to write any new programs. As best as I can determine at this time is that there are about 900-1000 open files in civil. The largest number of these appear to be family.

If no dlop program is available, the other alternative is to personally review each file to determine its status. This leads to the question of whether we have resources to review the files and to flag the ones that should be closed. I could take it from there and review the files and send out dlops, etc. I dont think I can get you information for a week or two on exactly what resources we have.

Pam Clark, the clerk over civil, is trying to help as much as she can. She reports that there havent been dlops in a long time and she would welcome us doing something. Pam, however, is not the clerk over family some I will need to talk to that person about doing something with those files. I have a gut sense that there may be a lot of files over there that can be closed.

All of this notwithstanding, I am of the opinion at this time that this is a full time docket and the assistance of the magistrate on pro se family and dependency is necessary. I'll keep you advised as I get things operating better and I get more efficient in handling the cases.

Our move at the end of the year to the civil judge chambers will be a big help. At least then Shirley and I can call out to each other from her office and the hearing room even if the phones continue not to work!

We are making progress but it is still slower than I would like.

JCC

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN AND
FOR LEON COUNTY, FLORIDA.

COUNTRY WIDE HOME LOANS, INC.,

CASE NO. 2006 CA 3123

Plaintiff,

vs.

BRIAN BAILEY; ANNA BAILEY;
JOHN DOE; and JANE DOE,

Defendants.

FILED
CIRCUIT CIVIL DIV.
07 OCT -2 AM 11:23
BOB INZLER
CLERK CIRCUIT COURT
LEON COUNTY, FLORIDA

ORDER ON RESPONSE TO ORDER TO SHOW CAUSE

THIS CAUSE was considered by the Court *sua sponte* upon the Order to Show Cause entered in this proceeding on August 24, 2007, and Plaintiff's Response to Order to Show Cause filed September 19, 2007, and this Court having reviewed the same, the Court file, and being otherwise fully advised in the premise, finds as follows:

1. Counsel for Plaintiff scheduled and received hearing time from this Court for a hearing on August 15, 2007.
2. Counsel and/or Plaintiff failed to appear by telephone or otherwise for the hearing.
3. Counsel states in the Response to Order to Show Cause that a Notice of Cancellation was created on August 6, 2007, and that the hearing was cancelled on August 8, 2007. Attached as Exhibit A to the response is a copy of a letter dated "August 6, 2007," addressed to the Clerk of Courts of Leon County transmitting a Notice of Cancellation of Hearing dated "August 8, 2007," and a letter dated "August 8, 2007," transmitting a copy of the Notice of Cancellation to the undersigned.
4. The official docket and records of the Clerk of Circuit Court for this case do not reflect the filing of a Notice of Cancellation even as of this date.

5. The letter dated August 8, 2007, was not received by the undersigned or his judicial assistant.

6. The Court file reflects that Rebecca Jones, the Judicial Assistant to Judge William Gary who was covering the scheduled hearing, contacted the firm at 9:45 a.m. on the date of hearing and was told that the hearing had been cancelled but the “firm had neglected to advise us.”

7. The Law Offices of Marshall C. Watson, P. A. have an extensive foreclosure practice and have filed numerous foreclosures in the Second Judicial Circuit.

8. Because of that extensive practice, the firm is very familiar with Civil Circuit Guidelines and Other Information posted on the judicial website by Judge Thomas H. Bateman, III, and in particular the requirement that once set on the Judge’s Calendar, a hearing may be cancelled or continued only by Court order.

9. This hearing was scheduled on Judge Bateman’s docket, and no motion was filed or court order obtained to cancel the scheduled hearing.

10. The Response to Order to Show Cause was mailed to Sean Moloney, Esq., Marshall C. Watson, P.A., 1800 North West 49th Street, Suite 120, Fort Lauderdale, FL 33309, the attorney in the office assigned to this file.

11. The response to the order to show cause was due to be filed on or before Monday, September 10, 2007. The response was not filed in this Court until September 19, 2007.

The Court also finds that Plaintiff and/or Plaintiff’s counsel has failed to show good cause why Plaintiff and/or its counsel did not appear at the hearing scheduled for August 15, 2007, and has not shown that proper procedures were followed for the cancellation of the hearing. Failure to appear at scheduled foreclosure hearings, whether intentionally or through carelessness, or as the

result of the failure of internal firm procedures and policies to insure proper appearance at hearings, is becoming an almost frequent occurrence for foreclosure proceedings scheduled in the civil divisions in for Leon County, Florida. The caseloads handled by the judges of the State of Florida are the some of the heaviest in the nation, if not the heaviest. The Second Judicial Circuit has been certified for an additional circuit judge for three years, but one has not been funded. Hearing times for civil proceedings are at a premium, and available time for preparation for such hearings by the Court is extremely low. Litigants may wait sometimes months for even a fifteen minute hearing. For counsel to schedule said hearing before counsel is actually prepared to proceed, as in this case, is inappropriate. To then cancel the hearing because counsel is not ready to proceed is a tremendous waste of limited judicial and public resources. But for counsel to fail to appear, or neglect to follow published procedures for the cancellation of a hearing is even more troublesome. It is therefore,

ORDERED that counsel shall pay \$200 to the Tallahassee Bar Legal Aid Foundation, Inc. within ten (10) days of the date of this order, or appear before the Court at the Leon County Courthouse, 301 S. Monroe Street, Room 365A, Tallahassee, FL on October 29, 2007, at 11:00 a.m. and show cause why counsel should not be sanctioned.

It is further **ORDERED** that the scheduling of hearings without being properly prepared to proceed, or a future failure to appear for a scheduled hearing without good cause will result in sanctions, and if such failure be the result of firm counsel's actions, may include the prohibition of the filing of future foreclosure proceedings in the circuit by the firm. For the purpose of this order, good cause shall be as defined in case law such as personal injury, hospitalization, natural disaster, etc., but shall not include the failure of internal firm policies or practices.

DONE and ORDERED in Tallahassee, Leon County, Florida this 2nd day of October,

2007.



CHARLES A. FRANCIS
Chief Judge

Copies furnished to:

Sean Moloney, Esq.
Marshall C. Watson, PA
1800 North West 49th Street, Suite 120
Fort Lauderdale, FL 33309
Attorney for Plaintiff

Mr. Brian Bailey
Ms. Anna Bailey
2387 Lake Heritage Drive
Tallahassee, FL 32311

Mr. Ray Robinson
Ms. Marie Robinson
2406 Dozier Drive
Tallahassee, FL 32301

Signed 10/2/07
Original to Clerk 1/
Copies sent 1/

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY

**HSBC BANK USA, NATIONAL ASSOCIATION, AS
TRUSTEE FOR LUMINENT MORTGAGE TRUST
2006-6,**
Plaintiff,

vs.

CASE NO. 2007-CA-7993

ANTONIO DE FREITAS, et. al.,
Defendants.

**ORDER TO SHOW CAUSE WHY PLAINTIFF AND PLAINTIFF'S ATTORNEYS
SHOULD NOT BE HELD IN CONTEMPT AND SANCTIONED**

To: HSBC Bank USA
1800 Tysons Bend
McLean VA 22105

Smith Hiatt & Diaz PA
PO Box 11438
Fort Lauderdale FL 33339-1438
Attn: Robert A. Smith, Bar #116186
Attn: Ryan T. Cox, Bar #0032686
Attn: Patrice A. Tedesco, Bar # 0628451
Attn: Michael D. Wild, Bar #0028643
Attn: Daniel S. Stein, Bar # 0117412
Attn: Gavin W. MacMillan, Bar # 0037641
Attn: Gabrielle M. Strauss, Bar #0059563

FILED FOR RECORD
R.B. SHORR
2010 JUL -7 AM 11:42
CLERK OF CIRCUIT COURT
MANATEE CO FLORIDA

YOU ARE HEREBY NOTIFIED that this Court shall conduct a hearing at the Manatee County Judicial Center, 1051 Manatee Ave West, Bradenton FL 34205, before the Honorable Janette Dunnigan on **MONDAY, AUGUST 30, 2010 AT 1:30 P.M.** to allow Plaintiff and Plaintiff's Attorneys to show cause why they should not be held in Contempt of Court and sanctioned for failing to conduct themselves properly in the above case.

The Court finds as follows:


1. The Mortgage Foreclosure Complaint was filed November 16, 2007. The case has been at issue since 2008.

-
2. Plaintiff's Motion for Summary Judgment was filed February 27, 2008 and set for hearing on May 29, 2008. Although Kimberly Humphrey Esq. appeared telephonically on behalf of the plaintiff, the plaintiff failed to comply the local rules and the hearing was canceled.
 3. Another hearing was scheduled for July 31, 2008. No one appeared and plaintiff still had not complied with local rules.
 4. Plaintiff scheduled another summary judgment hearing for December 9, 2009 but a failed to notice the hearing. Plaintiff did not cancel or release the time on the court's calendar. No one appeared for the hearing when the case was called by the court.
 5. Plaintiff re-noticed for summary judgment on November 16, 2009 but canceled the December 17, 2009 hearing.
 6. Barrington Ridge Homeowners Association Inc filed a Motion to Compel Plaintiff to Proceed with Foreclosure Sale or Pay Assessments Due to Association.
 7. The Court granted Barrington Ridge Homeowners Association Inc's Motion to Compel at a hearing on February 4, 2010 and ordered the Plaintiff to set a hearing on the Motion for Summary Judgment within 90 days. Dustin Hay Esq. appeared on behalf of the plaintiff at the hearing.
 8. Plaintiff re-noticed for summary judgment on February 26, 2010 but then filed an Amended Notice of Hearing on March 22, 2010 scheduling the motion for summary judgment on April 5, 2010. Plaintiff failed to appear at the hearing. The Court was required to call Plaintiff's attorney, Ryan Cox. Although Mr. Cox signed the notice of hearing, he was unable to provide the Court with any explanation as to why Plaintiff's counsel or any of them, were not present for the hearing yet again.
 9. The Plaintiff re-noticed for summary judgment on May 21, 2010 scheduling the hearing for June 28, 2010. Plaintiff again failed to appear at the hearing and didn't file a Notice of Cancellation until June 29, 2010, one day after the hearing.

This conduct has caused disruption to the Court's calendar, demonstrated utter disregard and disrespect to the Court, caused time and money to be wasted by the other parties to the action who appear at scheduled hearings, failed to move the case forward pursuant to mandated time standards, failed to comply with local rules and caused counsel for Barrington Ridge Homeowners Association Inc. additional attorneys fees.

FAILURE TO APPEAR AT THE ABOVE HEARING SHALL BE GROUNDS FOR CONTEMPT AND FOR SANCTIONS TO INCLUDE FINES, COSTS, ATTORNEY'S FEES, DISMISSAL AND/OR INCARCERATION AS DEEMED APPROPRIATE.

DONE AND ORDERED in Chambers at Bradenton, Manatee County, Florida this 6 day of July, 2010.


Janette Dunnigan, Circuit Judge

Copies furnished via US mail to:

Antonio De Freitas
6121 41st St East
Bradenton FL 34203

Camila De Freitas
4948 79th Ave Dr East
Sarasota FL 34243

David G. Muller, Esq.
OBO Barrington Ridge HOA
6230 University Pkwy, Suite 204
Sarasota FL 34240

Mortgage Electronic Registration System
c/o CT Corporation System, Inc
1200 S Pine Island Rd
Plantation FL 33324

IN THE CIRCUIT COURT FOR MANATEE COUNTY,
FLORIDA. CIVIL DIVISION

CASE NO. 412007CA007993XXXXXX

HSBC BANK USA, NATIONAL ASSOCIATION, AS
TRUSTEE FOR LUMINENT MORTGAGE TRUST
2006-6,

Plaintiff,

vs.

ANTONIO DE FREITAS; CAMILA DE FREITAS;
BARRINGTON RIDGE HOMEOWNERS
ASSOCIATION, INC.; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. MIN NO.
1000460-0012835542-1; UNKNOWN TENANT NO. 1;
UNKNOWN TENANT NO. 2; and ALL UNKNOWN
PARTIES CLAIMING INTERESTS BY, THROUGH,
UNDER OR AGAINST A NAMED DEFENDANT TO
THIS ACTION, OR HAVING OR CLAIMING TO
HAVE ANY RIGHT, TITLE OR INTEREST IN THE
PROPERTY HEREIN DESCRIBED,

Defendants.

**PLAINTIFF'S RESPONSE TO COURT'S ORDER
TO SHOW CAUSE AND PLAINTIFF'S REQUEST FOR PARTIAL RELIEF**

Plaintiff, HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR LUMINENT MORTGAGE TRUST 2006-6, Ryan T. Cox, Patrice A. Tedesco, Gavin W. MacMillan, and Gabrielle M. Strauss, by and through the undersigned counsel, and Michael D. Wild, Robert A. Smith, and Daniel S. Stein¹, by special appearance through the undersigned counsel, files this response to the Court's order to show cause, and states:

This Court has entered an order to show cause why Plaintiff and Plaintiff's attorneys should not be held in contempt and sanctioned for failure to appear, or timely cancel, scheduled hearings.

Plaintiff's counsel submits that Plaintiff did not engage in willful conduct, did not intend to subvert the efficient operation of the court, and meant no disrespect to the presiding Judge or the litigants; further, Plaintiff has now dismissed Plaintiff's case.

¹Robert A. Smith and Michael D. Wild were not served the Order to Show Cause. Daniel S. Stein was not served with the Order to Show Cause notwithstanding the indication of "individual service". The process server left the attached order reflecting service on July 21, 2010 at 10:50 a.m. (See Exhibit "A"). The return of service reflects a time of service of 12:11 p.m. (See exhibit "B"). Mr. Stein was in Palm Beach County Court the morning of July 21, 2010 and was not present for individual service, and was not served.

**BACKGROUND OF PLAINTIFF'S COUNSEL'S PROCEDURES
FOR ABIDING BY LOCAL RULES**

Plaintiff's counsel receives referrals for foreclosure litigation across all Counties within the State of Florida. In order to accommodate these referrals, Plaintiff's counsel, headquartered in Fort Lauderdale, Florida, utilizes electronic communications, frequent travel, and the services of local counsel in order to provide representation in each Circuit of the State of Florida.

Each such Circuit, and each Judge presiding in each Circuit, has implemented local rules for the efficient operation of their Court. Plaintiff understands and appreciates the importance of these rules, and the need for all attorneys practicing therein to strictly follow these mandates.

In order to manage the disparate requirements of each jurisdiction, Plaintiff's counsel utilizes a computer database which populates the particular rules of each i) Circuit ii) Court, and iii) Judicial Division into Plaintiff's counsel's file once a lawsuit is filed and assigned to that particular division.

Plaintiff's counsel has assigned 6 members of its staff to the task of maintaining updated and accurate information regarding each division's rules and requirements in an effort to ensure that the computer database accurately reflect the rules of each division.

As a result of the circumstances surrounding the instant case, Plaintiff's counsel has now discovered that a portion of the rules applicable to the 12th Circuit, Circuit Civil Division B, were not included in the Plaintiff's database, resulting in a failure to abide by scheduling requirements for this division.

**PLAINTIFF'S COUNSEL HAS CORRECTED THE INCORRECT
INFORMATION FOR THIS JUDICIAL DIVISION**

Plaintiff's counsel has reviewed the procedures indicated herein to discover and ascertain the reason that Plaintiff may have failed to abide by the rules of this Court. Plaintiff has discovered that this Court's rules were not accurate within the computer system, resulting in a failure to properly schedule and cancel hearings on the Court's calendar.

Plaintiff's counsel had been under the mistaken impression that a cancellation in this division could occur informally, and had acted under that mistaken impression during the entirety of this litigation.

Plaintiff has now updated Plaintiff's database to reflect the most recent requirements for the 12th

Circuit, Circuit Civil Division B. Plaintiff attaches hereto, as Exhibit "C", the most updated Information and Requirements Plaintiff has obtained for this division.

**PLAINTIFF'S ATTORNEYS SHOULD NOT BE
HELD IN DIRECT OR INDIRECT CIVIL CONTEMPT**

At all times pertinent to this case, Plaintiff's counsel has operated in accordance with their obligations as members of the Florida Bar. Per Rule 4-3.4(c) of the Rules of Professional Conduct, "A lawyer shall not *knowingly* disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists." (Emphasis added).

In the present litigation, Plaintiff's counsel did not knowingly violate the rules of court, as the failure to properly schedule and cancel hearings was not intentional. Further, Plaintiff's counsel does not dispute the validity of the court's rules.

Additionally, Rule 4-3.2 of the Rules of Professional Conduct states that "A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." In the present case, Plaintiff's counsel abided by this requirement, as well. Although the present litigation did extend over several years, this was due to communications with the client, and in furtherance of their interests as the Plaintiff in the case.

The comment to Rule 4-3.2 notes that "Nor will a failure to expedite be reasonable if done for the purposes of frustrating an opposing party's attempt to obtain rightful redress or repose." This comment is not applicable in the present case. Although Defendant Barrington Homeowner's Association did seek, and did obtain, an order compelling Plaintiff to proceed with its action, Plaintiff's delay a) was not done to frustrate the Association's remedies at law, and b) did not prevent or otherwise frustrate the Association from seeking its own legal redress. Moreover, the delays in the case did not prejudice the remaining defendants, Antonio De Freitas and Camila De Freitas (who are the homeowners), as they have not been displaced from their residence at any time during the pendency of this litigation.

PLAINTIFF HAS PURGED ANY CLAIMED CONTEMPT

Plaintiff respectfully submits that it has corrected the issues that may have led to a lack of compliance with this Court's local rules. Plaintiff submits that it has purged any claimed contempt and asks the Court to make such a finding and enter a ruling in accordance therewith.

ALTERNATIVE REQUEST FOR PARTIAL RELIEF

To the extent that this Court does not find this response to be a showing of good cause, Plaintiff would ask the court to amend the order to allow Plaintiff to designate the undersigned to attend the scheduled hearing on August 30, 2010.

The Court's order to show cause was directed towards 7 attorneys associated with Plaintiff's law firm. Of those attorneys, Michael D. Wild is no longer employed with the firm. Another attorney, Daniel S. Stein, will be leaving the employ of Plaintiff's firm on August 31, 2010. A third attorney, Robert A. Smith, is retired and not actively practicing with the firm. With due respect to the Court's order, the undersigned has submitted this pleading under a special appearance on their behalf due to the jurisdictional issues arising from the lack of service of process.

While the remaining attorneys did file pleadings in this case, they did so according to the policies and procedures that were in part created and implemented by undersigned counsel, who is Senior Litigation Partner at Smith, Hiatt, and Diaz. As a shareholder and officer of the firm, the undersigned assumes responsibility for the conduct of the associates.

As such, Plaintiff would request that Roy A. Diaz be substituted for the named parties in the Court's order to show cause, such that Roy A. Diaz is the only person compelled to attend the August 30, 2010, hearing.

CONCLUSION

The undersigned counsel certainly recognizes the strain imposed on the Florida Judiciary due to the current foreclosure crisis. It is this law firm's sincere intention to meet its ethical obligation of assuring cases are expedited in accordance with Florida law and in the most judicially economical way possible.

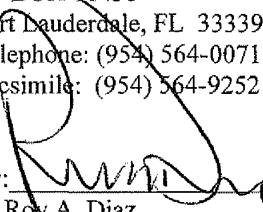
Plaintiff, and Plaintiff's attorney, wholeheartedly regret any confusion or consternation that may have arisen from this case, either for the litigants or for the court system. Plaintiff, and its counsel, endeavor to act with the utmost respect and deference to this Court. It is on this basis that Plaintiff has elected to dismiss Plaintiff's case rather than further aggravate the parties.

Plaintiff submits that inadvertent delays created the issues attendant to the Court's motion, and would ask that good cause be found, and that neither Plaintiff nor Plaintiff's counsel be held in contempt for the conduct in this case.

In the alternative, if good cause is not found, Plaintiff would ask that attorney Roy A. Diaz, senior Litigation partner at Smith, Hiatt, and Diaz, P.A., be selected to represent the Plaintiff's interests at the Court's scheduled August 30, 2010 hearing.

I HEREBY CERTIFY that a copy of the Motion has been mailed to the parties on the attached service list this 18th day of August, 2010.

SMITH, HIATT & DIAZ, P.A.
Attorneys for Plaintiff
PO BOX 11438
Fort Lauderdale, FL 33339-1438
Telephone: (954) 564-0071
Facsimile: (954) 564-9252

By: 
Roy A. Diaz
Florida Bar No. 767700

SERVICE LIST

Case No. 412007CA007993XXXXXX

ANTONIO DE FREITAS
6121 41ST STREET EAST
BRADENTON, FL 34203

CAMILA DE FREITAS
4948 79TH AVENUE DR E
SARASOTA, FL 34243

David G. Muller, Esq.
Attorney For BARRINGTON RIDGE HOMEOWNERS ASSOCIATION, INC.
6230 University Parkway, Suite 204
Sarasota, FL 34240

MERS
C.T. Corporation System, Inc.
1200 South Pine Island Road
Plantation, FL 33324

EXHIBIT “C”

Janette Dunnigan
Circuit Judge

Marcia Kral
Judicial Assistant

Circuit Civil Division B – Information and Requirements
(Updated August 16, 2010)

IMPORTANT UPDATE: There are new changes in our Foreclosure Procedures. Please visit the Foreclosure portion of our website for the latest updates prior to scheduling a hearing. Scheduling a hearing on the wrong docket will result in the hearing being canceled without notice.

Contact Information

Office Hours: Regular office hours are from 8:30 am to 5:00 pm EST

Courtroom: Proceedings are held in Courtroom 6E at the Manatee County Judicial Center, 1051 Manatee Ave West, Bradenton FL 34205

Mailing Address: PO Box 3000, Bradenton FL 34206

Telephone: (941) 749-3635
Please **DO NOT CALL** the judicial assistant without first reading these requirements. **To inquire about the outcome of a hearing, please consult the Clerk's website at www.manateeclerk.com**

Fax: (941) 749-3686
The fax should be used for **emergencies only**, such as canceling a mortgage foreclosure sale, or with permission from the judicial assistant.

Local Rules & Standards of Professionalism

All attorneys must follow the Local Rules and the 12th Judicial Circuit Standards of Professionalism, which are available via the internet at www.manateebar.com or www.jud12.flcourts.org

Scheduling Hearings (for Foreclosure Hearings, see section below)

Hearings 1 hour or less: All hearings 1 hour or less in length must be scheduled through the Judicial Automated Calendaring System (JACS). Available timeslots are 15, 30, 45 and 60 minutes. JACS can be accessed online at www.jud12.flcourts.org

Hearings More Than 1 Hour: All hearings estimated to last more than 1 hour must be scheduled through the judicial assistant.

Uniform Motion Calendar (UMC): Unless otherwise noted, UMC is held at 9:00 a.m. every Friday, excluding holidays. UMC motions are to be non-evidentiary and 5 minutes or less in length. These hearings are **not** scheduled through JACS or the judicial assistant. Please do not forward copies of the Notice of UMC Hearing to the judge's office or call the judicial assistant with any cancelations. Attorneys will sign up as they arrive to the courtroom for the hearing and the hearings will generally be taken in order of sign up. **No telephone appearances are permitted and no court files are available.** Counsel will comply with Florida Rules of Civil Procedure and applicable case law in terms of motions and notices and will bring copies of these pleadings to the hearing for the judge.

Emergency Hearings: All motions requesting emergency hearing time shall be delivered directly to the judge along with a cover letter. The motion shall be detailed and include the amount of hearing time required. The judge will review the motion and determine whether an expedited hearing is required.

Motions for Rehearing, Reconsideration and New Trial: DO NOT SET THESE FOR HEARING. All Motions for Rehearing, Reconsideration or for New Trial are to be submitted directly to the judge along with a cover letter. The motion should be detailed. The judge will review the motion to determine whether a hearing is required.

Cancelation of Hearings

General Information: JACS should be used to cancel hearings when possible. However, JACS will not authorize a cancelation when it results in short notice to the parties. When JACS does not permit a cancelation, the moving party may cancel the hearing by contacting the judicial assistant by telephone. The phone call shall be promptly followed by a Notice of Cancelation filed with the Clerk of Court and notice of the cancelation provided to all parties.

Telephonic Appearance

General Information: Telephonic appearances are NOT allowed on any Foreclosure proceeding or UMC's. Telephonic appearances are allowed on non-evidentiary hearings 15 minutes or less in length. The Court will **not** initiate the call. The attorney wishing to appear telephonically will call the judicial assistant at (941) 749-3635 at the scheduled hearing time.

Conference Calls: The Court does not have the ability to accept more than one incoming call at a time. Therefore, if more than one person will be appearing telephonically, arrangements for a conference call must be arranged by the moving party.

Agreed Orders

Effective immediately, any Agreed Order submitted to the judge ex parte shall be accompanied with a signed stipulation by all involved parties.

Ex Parte Motions and Orders

Once a party has appeared by filing any paper in the case, the Court will not accept, consider or rule upon any ex parte motions or communications from any other party. Any motion shall be set for hearing with notice to all parties.

Trials

General Information: Once the case is at issue, file a Notice That Case Is At Issue and Ready For Trial with the clerk and forward a copy to the judge's office.

Case Management Conference (CMC): The judicial assistant will prepare an Order of Case Management which contains a date for case management, available trial dockets and a trial stipulation. If the parties can stipulate to a trial period and the original trial stipulation has been submitted to the judge's office 3 days prior to the case management conference, appearance at the case management conference is waived. If an agreement on a trial docket cannot be reached, counsel shall appear at the conference with their professional calendars.

Trial Orders: Once all parties have stipulated to a trial docket, the judicial assistant will prepare a trial order and an order of mediation.

Pre-Trial Conference (PTC): The Pre-Trial Conference is optional for trials 5 days or less but mandatory for trials more than 5 days (refer to your trial order). Trials 5 days or less in which the PTC is optional may waive appearance if a stipulated Pre-Trial Order is submitted to the judge's office 3 days prior to the conference.

Trial Schedule: After the Pre-Trial Conference, the trial schedule will be created and posted on the internet. It is the responsibility of the attorneys and all parties to see when their case is scheduled to begin.

FORECLOSURE HEARINGS

EFFECTIVE JULY 19, 2010, FORECLOSURE HEARINGS ARE NO LONGER SCHEDULED ON THE DIVISION JUDGE'S HEARING DOCKETS. READ THE INFORMATION BELOW VERY CAREFULLY. SCHEDULING A HEARING ON THE INCORRECT DOCKET WILL RESULT IN YOUR HEARING BEING CANCELED WITHOUT NOTICE.

General Information: All foreclosure hearings must be scheduled through the Judicial Automated Calendaring System (JACS) on either FORECLOSURE UNCONTESTED; JUDGE HARRY RAPKIN or FORECLOSURE CONTESTED; FORECLOSURE JUDGE. JACS can be accessed online at www.jud12.flcourts.org . Prior to scheduling any foreclosure hearing, please visit the foreclosure portion of our website to ensure that you have reviewed and complied with the administrative orders and mandatory requirements.

Questions & Inquiries: All communication relating to a mortgage foreclosure case should be directed to the Foreclosure Case Managers at (941) 749-3600 ext 7196.

Telephonic Hearings: **NO TELEPHONIC APPEARANCE** is permitted at any type of mortgage foreclosure hearing per Administrative Order 2009-2.1.

Scheduling Foreclosure Hearings

For UNCONTESTED Summary Judgments of Mortgage Foreclosure: These hearings are to be set on the FORECLOSURE UNCONTESTED; JUDGE HARRY RAPKIN hearing docket in JACS. All hearings are to be noticed for 9:00 a.m. in Courtroom 4E. **DO NOT SEND COPIES OF THE NOTICE OR MOTION TO THE CASE MANAGERS.**

**For CONTESTED
Summary Judgments
of Mortgage Foreclosure:**

These hearings are to be set on the **FORECLOSURE CONTESTED;
FORECLOSURE JUDGE** hearing docket in JACS. All hearings are to be noticed for Courtroom 4E. Send copies of the Notice of Hearing and motion(s) to be heard to Foreclosure Case Manager, Manatee County Judicial Center, 1051 Manatee Ave West, Bradenton FL 34205.

**For ALL OTHER
MOTIONS in
Mortgage Foreclosures:**

These hearings are to be set on the **FORECLOSURE CONTESTED;
FORECLOSURE JUDGE** hearing docket in JACS. All hearings are to be noticed for Courtroom 4E. Send copies of the Notice of Hearing and motion(s) to be heard to Foreclosure Case Manager, Manatee County Judicial Center, 1051 Manatee Ave West, Bradenton FL 34205.

Canceling Foreclosure Hearings

General Information:

JACS should be used to cancel hearings when possible. However, JACS will not authorize a cancelation when it results in short notice to the parties. When JACS does not permit a cancelation, the moving party **MUST** cancel the hearing by contacting the foreclosure case manager at (941) 749-3600 ext 7196. The phone call shall be promptly followed by a Notice of Cancelation filed with the Clerk of Court and notice of the cancelation provided to all parties.

Canceling Foreclosure Sales

General Information:

Immediately fax a Motion and Order to cancel a sale to the judge's office at (941) 749-3686.

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA

FILED FOR RECORD
R.B. SHORE
2010 SEP -2 AM 10:26
CLERK OF THE CIRCUIT COURT
MANATEE CO. FLORIDA

**HSBC BANK USA, NATIONAL ASSOCIATION,
As Trustee for Luminent Mortgage Trust 2006-6,
Plaintiff,**

v.

CASE NO.: 2007-CA-007993

**ANTONIO DE FREITAS, et al.,
Defendants.**

ORDER ADJUDICATING PLAINTIFF'S ATTORNEYS IN CONTEMPT OF COURT

THIS MATTER came before this Court on its Order to Show Cause Why Plaintiff and Plaintiff's Attorneys Should Not be Held in Contempt and Sanctioned, filed on July 7, 2010, which is hereby incorporated as part of this Order.

The Order to Show Cause was served upon the Plaintiff, HSBC Bank USA, National Association, the Law Firm of Smith, Hiatt & Diaz P.A., and attorneys of the firm: Robert A. Smith, Ryan T. Cox, Patrice A. Tedesco, Michael D. Wild, Daniel S. Stein, Gavin W. MacMillan, and Gabrielle M. Strauss. Attorney Roy Diaz appeared on behalf of the Plaintiff, the Law Firm and each attorney.

On August 19, 2010, Smith, Hiatt & Diaz, P.A. filed Plaintiff's Response to Court's Order to Show Cause and Plaintiff's Request for Partial Relief.

On August 20, 2010, Plaintiff filed its Notice of Voluntary Dismissal and this Court dismisses the Plaintiff from the contempt action.

On August 30, 2010, Smith, Hiatt & Diaz, P.A., through Roy Diaz, Ryan T. Cox, Patrice A. Tedesco, Gavin W. MacMillan, and Gabrielle M. Strauss, appeared before the Court. Robert A. Smith, Michael D. Wild and David S. Stein were excused because they are no longer



associated with the Law Firm. All parties acknowledged service, waived any defect in service and acknowledged jurisdiction of the Court. The Court held a hearing on the matter, whereby it heard testimony and argument from Plaintiff's attorney, Roy Diaz. His testimony and arguments were adopted by each attorney present.

This Court, having considered the Plaintiff's Response, the court file and docket, the testimony and arguments of counsel, the applicable law, and being otherwise duly advised in the premises, finds as follows:

1. The Law Firm of Smith, Hiatt & Diaz, P.A. (hereinafter referred to as "The Law Firm") conducts a high volume mortgage foreclosure practice which does not assign particular cases to particular lawyers. The Law Firm reserves hearing time on the Court's calendar prior to their receipt of all documents necessary from the client to proceed. The Law Firm does not make diligent efforts to notify other parties of cancellations of hearings because "the defendants don't usually show up". The Law Firm was aware of and had internet access to the Clerk's Dockets, Administrative Orders, Judges' requirements and foreclosure programs in the Twelfth Judicial Circuit, Manatee County, Florida. In the above styled case, the Law Firm conducted itself as follows:

- a. The Law Firm secured summary judgment hearing time for May 29, 2008 on the Court's automated calendar system and attempted to appear by telephone in violation of the Court's requirements. It further failed to comply with the Foreclosure Procedures of the Twelfth Judicial Circuit by not having all documents filed prior to the hearing.
- b. The Law Firm secured summary judgment hearing times for July 31, 2008 and December 9, 2008, but still did not comply with the Foreclosure Procedures by

not having all documents filed prior to the hearings. The Law Firm did not appear nor cancel the hearings, nor notice the Court or the other parties.

- c. The Law Firm then again secured summary judgment hearing time and cancelled same 3 days prior to the December 9, 2009 hearing. Late cancellations do not permit other litigants to utilize that time.
- d. The Law Firm then appeared through local counsel on Defendant Barrington Ridge Homeowners Association, Inc.'s motion to compel on February 4, 2010, which was granted. Plaintiff was ordered to proceed to summary judgment within 90 days.
- e. The Law Firm scheduled and rescheduled hearings on their motion for summary judgment with notice but did not proceed.
- f. On April 4, 2010, the Court called up the Motion for Summary Judgment (which had been filed February 27, 2008) for hearing, but the Law Firm failed to appear. The Court telephoned Ryan T. Cox, who had signed the Notice of Hearing. Mr. Cox did not have knowledge of the hearing scheduled nor any excuse as to why the hearing was not docketed on the Law Firm's calendars. The Court advised Mr. Cox that the Motion for Summary Judgment was denied and the Court would be preparing an Order to Show Cause as to why Mr. Cox and the Law Firm should not be held in contempt for having set the 5 previous hearings but did not appear or cancel or notify the Court or other parties.
- g. On April 13, 2010, the Law Firm noticed the Motion for Summary Judgment (which had already been denied and had not been re-filed) for hearing on June 28, 2010. On May 21, 2010 the same motion was renoticed for the same June

28, 2010 date. The Court withheld filing its Order to Show Cause to await the outcome of that hearing.

- h. On June 28, 2010, the Law Firm failed to appear or cancel the hearing. The Court took testimony from the Defendant, Antonio De Freitas, regarding his lost wages and costs because he had appeared for the previously set hearings and had never been noticed of any cancellations. The Court reiterated that the Motion for Summary Judgment had been denied and Ordered Sanctions to reimburse the Defendant.
- i. All Court appearance records are available on line and the Law Firm could have determined the Court's prior ruling by simply reviewing the Clerk's on line docket.
- j. The Law Firm failed to comply with the Court's Order to proceed within 90 days.

2. The Law Firm operates its procedures in the above styled case and in the representation of Plaintiffs in mortgage foreclosures in deliberate and contumacious disregard for the authority of the Court, the efficient administration of justice, and in utter disregard for the consequences to other litigants. Their disobedience of Court Orders is constant and flagrant, and, therefore, justifies this Court's imposition of sanctions for contempt.

3. The Law Firm failed to adhere to the standards of the Florida Bar's Creed of Professionalism, in that they failed to conduct themselves in a manner "to assure the just, speedy and inexpensive determination of every action and resolution of every controversy." They failed to "respect the time and commitments of others," and they failed to "be diligent and punctual in communicating with others and in fulfilling commitments." The Law Firm further failed to

adhere to the Oath of Admission to the Florida Bar, in that they failed to “maintain the respect due to courts of justice and judicial officers.”

4. The Law Firm scheduled seven hearings in this case, to which they only appeared at one, which was by telephone in violation of the Twelfth Circuit rules prohibiting telephone hearings. The Law Firm did not provide proper notice of cancellation to this Court or to Defendants regarding the six other scheduled hearings. Securing time on a Court calendar without being properly prepared precludes other litigants the opportunity to obtain hearing time. This Court reviewed the file prior to each hearing and waited in the courtroom the allotted time because the hearing was not cancelled. The Defendants appeared pursuant to the notices. The failure to be prepared for, appear at, or properly cancel scheduled hearings in accordance with local rules constitutes a direct and willful disregard for the Court’s calendar and the administration of justice.

5. The Law Firm was under an Order Compelling Plaintiff to proceed and failed to proceed or dismiss within the mandated time frame. No explanation was ever submitted to explain why the hearings were scheduled but either rescheduled or ignored.

6. The Law Firm’s noncompliance and disobedience was either intentional and deliberate or so grossly negligent that it rises to the level of willful misconduct. The Law Firm has repeatedly failed to be prepared for, appear at, or properly cancel hearings in accordance with local rules. Local rules are easily located on the Twelfth Judicial Circuit’s website and the court appearance records are available online through the Manatee Clerk’s website. The Law Firm was specifically advised of their noncompliance at the first hearing over 2 years ago. Their willful misconduct by failing to correct docketing errors is most illustrative as this Court personally warned Mr. Cox via telephone after the firm failed to appear on behalf of its client at

a hearing scheduled in this case on April 5, 2010. During that conversation, this Court apprised Mr. Cox of the firm's misconduct, of the Court's intention to file an Order to Show Cause, and specifically warned Mr. Cox that the firm's practices violated the code of ethics. Thereafter, Plaintiff's attorneys committed the same misconduct by failing to appear at or properly cancel the very next scheduled hearing.

7. The Law Firm's lack of consideration for the Court's calendars, their disobedience for this Court's local rules and orders, and their misconduct in handling mortgage foreclosure cases is deliberate, willful and flagrant in nature, and as such, is evidence of contempt. The Law Firm's misconduct was not a single incident—instead their deliberate, willful and flagrant misconduct derives from a combination of their repeated failure to appear at or to notify the Court or the other parties of a cancellation of scheduled hearings, and the same continued misconduct after this Court specifically warned the firm of such misconduct.

8. Moreover, this Court notes that Plaintiff's attorneys have been previously warned in Hillsborough County concerning the filing of sham pleadings. The Court considers the repeated filing of notices for scheduled hearings when they failed to appear, failed to provide proper notice of cancellation, or failed to be adequately prepared for scheduled hearings establishes that they were woefully unprepared to proceed or had no intention of actually proceeding in the case. Further, the continued noticing of hearings on a motion that had been previously denied amounts to the filing of sham pleadings.

9. The Law Firm has no reasonable justification or adequate excuse for their noncompliance of local rules and court orders. Mr. Diaz's excuse is insufficient to justify a finding of good cause to preclude sanctions for contempt. The Law Firm's inadequate policies and procedures or ability to manage multiple local rules of the circuits of this state in which they

choose to practice is an internal business decision and does not require the Court to allow them a lesser standard than any other lawyer licensed to practice in the State of Florida, nor should the Law Firm's business model be allowed to impede the administration of justice. The fact that Mr. Diaz advises this Court that the firm has implemented policies and procedures to cure their misconduct is not sufficient to lull this Court into accepting that the Law Firm will adhere to this Court's future orders or to the current local rules. The Law Firm has already committed the same misconduct after those claimed policies and procedures to cure the problem were implemented. Such continued misconduct shows their deliberate, willful and flagrant disregard for this Court's authority and it is indicative of the firm's disrespect for this Court.

10. Mr. Diaz's explanation of the firm's newly implemented policies and procedures to cure their inadequacies regarding scheduled hearings were vague. Most importantly, those policies and procedures, which were claimed to have been implemented weeks prior to the date of this hearing, failed to cure the firm's scheduling inadequacies. On the very morning of the hearing on this matter, a plaintiff and an attorney from The Law Firm did not appear at or properly cancel a scheduled hearing in case number Manatee County Circuit Court Case No. 2007-CA-4470. The Law Firm's alleged newly implemented policies and procedures, therefore, do not provide this Court with assurance of future compliance.

11. The conduct is not an act of neglect or inexperience on the part of the lawyers specifically named. The lawyers willfully and with knowledge of the inadequacy of the internal calendaring system, continue to abide by the methods of the Law Firm.

12. In addition, Plaintiff's failure to appear at or provide proper notice of cancellation regarding scheduled hearings has prejudiced and injured Defendants by depriving them of lost wages and costing them legal related fees. Compensatory fines to Defendants are justified

because Plaintiff's attorneys failed to appear at or provide Defendants with notice of cancellation for the scheduled hearing on June 28, 2010. Defendant appeared and testified that as a result of appearing that date and for prior hearings as scheduled, they lost wages in the amount of four hundred dollars (\$400.00) and paid an interpreter fifty dollars (\$50.00). Plaintiff's attorneys waived the right to cross-examine Defendant regarding those expenses due to their failure to appear at the hearing.

13. Compensatory fines to the Barrington Ridge Homeowners Association, Inc. are justified for its expended attorney's fees. Defendant's attorney's appearance at hearings and expenses after the granting of the Motion to Compel were injury to the Defendant homeowner association. Plaintiff's attorneys, individually, and/or the Law Firm shall be required to pay such fees within 30 days upon the filing of an affidavit thereto.

14. The cost to the Law Firm for their required appearance before the Court to answer the Order to Show Cause is approximately seven thousand dollars (\$7,000.00). Roy Diaz is a partner and accepts responsibility for the conduct of the Law Firm's lawyers.

Accordingly, based on the above findings, it is hereby **ORDERED AND ADJUDGED** that:

15. The Law Firm of Smith, Hiatt & Diaz, P. A. is in contempt of court.

16. The Law Firm shall create effective, internal policies and procedures which will assure that its attorneys will attend scheduled hearings and be adequately prepared for all future hearings. Said policies and procedures shall be in writing and a copy forwarded to this Court within 30 days from the date of this Order.

17. The Law Firm shall submit to this Court an instrument of certification from each individual attorney and support staff, who are presently employed and become employed in the

future during the pendency of this action who will practice in Manatee County, Florida attesting under oath that such policies and procedures are in fact implemented at the firm and that each has read and understood the Administrative Orders, Local Rules of the Twelfth Judicial Circuit, and the particular judge's requirements in the handling of mortgage foreclosure cases. Each attorney shall also acknowledge that they have read the Guidelines for Professional Conduct as provided by the Florida Bar.

18. The Law Firm will not schedule future hearings with this Court until their clients have provided the appropriate documents, instruments and affidavits in support of their motions and same are in the possession of the Law Firm.

19. The firm shall provide to this Court, within five (5) days of the filing of this Order, a receipt to the effect that all pending cases the firm represents in Manatee County have been reviewed and that all hearings which are presently scheduled by the firm have been docketed on its respective attorney's calendar, and such receipt shall be signed by the attorney assigned to handle the disposition of the particular case.

20. This Court shall impose a daily fine of seven thousand dollar (\$7,000.00) for each day the firm is not in compliance with submitting said certified instruments from each attorney and staff member. Said fine shall begin accruing September 30, 2010 and shall continue daily until the Court has received compliance herewith. Compliance, when accepted by the Court, shall purge this fine.

21. Coercive fines are imposed upon the Law Firm in the amount of forty-nine thousand dollars (\$49,000.00). The Court considered the cost of seven thousand (\$7,000.00) for the Law Firm to appear in Court to answer a contempt charge for each hearing that the Law

Firm failed to appear at or properly cancel. Plaintiff's attorneys have thirty days (30) days from the date of this Order to purge the coercive fine.

22. The firm shall pay Defendants four hundred and fifty dollars (\$450.00) within ten (10) days, commencing August 30, 2010.

23. The firm shall pay the appropriate compensatory fine to Barrington Ridge Homeowners Association, Inc. following a determination of the appropriate attorney's fees and the Court reserves jurisdiction to order same.

24. Fines shall be paid to the Clerk of Circuit Court, Manatee County, Florida.

24. The Court reserves jurisdiction for a period of 60 days from the date of this judgment to notice The Law Firm, Roy Diaz, Ryan T. Cox and Gavin MacMillan on charges of indirect criminal contempt. All other attorneys are dismissed from this action.

DONE AND ORDERED in Chambers, at Bradenton, Manatee County, Florida, this 2nd day of September 2010.


JANETTE DUNNIGAN
CIRCUIT COURT JUDGE

Copies furnished to:

HSBC Bank USA
1800 Tysons Bend
McLean, VA 22105

Antonio De Freitas
6121 41st Street East
Bradenton, Florida 34203

David G. Muller, Esq.
OBO Barrington Ridge HOA
6230 University Pkwy, Ste. 204
Sarasota, Florida 34240

Smith, Hiatt & Diaz, P.A.
P.O. Box 11438
Ft. Lauderdale, Florida 33339

Camila De Freitas
4948 79th Avenue Drive East
Sarasota, Florida 34243

MERS
c/o CT Corporation System, Inc.
1200 S. Pine Island Road
Plantation, Florida 33324

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Order has been furnished to the above addressees by United States mail this 2 day of September 2010.



Judicial Assistant

**IN THE SECOND JUDICIAL CIRCUIT OF
FLORIDA**

OFFICE OF THE CHIEF JUDGE

ADMINISTRATIVE ORDER 2010 -09

**IN RE: UNIFORM PROCEDURES FOR RESIDENTIAL MORTGAGE
FORECLOSURE CASES**

WHEREAS, pursuant to Article V, section 2(d) of the Florida Constitution, and section 43.26, Florida Statutes, the chief judge of each judicial circuit is charged with the authority and power to do everything necessary to promote the prompt and efficient administration of justice, and rule 2.215(b)(3), Florida Rules of Judicial Administration, mandates the chief judge to “develop an administrative plan for the efficient and proper administration of all courts within the circuit;” and

WHEREAS, rule 2.545 of the Rules of Judicial Administration requires that the trial courts “...take charge of all cases at an early stage in the litigation and...control the progress of the case thereafter until the case is determined...”, which includes ...”assuming early and continuous control of the court calendar; ...”identifying priority cases;” “...implement such docket control policies as may be necessary to advance priority cases to ensure prompt resolution;” “...develop rational and effective trial setting policies, and advancing the trial setting of priority cases, older cases...”, and

WHEREAS, the Supreme Court of Florida has determined that effective case management is one of the best methods the courts can employ to facilitate and provide a more efficient use of limited judicial and clerk resources in a court system that is already overburdened; and

WHEREAS, the volume of mortgage foreclosure case filings have significantly increased in the Second Judicial Circuit of Florida requiring a uniform procedure for case management,

IT IS THEREFORE

ORDERED:

1. Any Motion for Summary Judgment filed in a residential mortgage foreclosure in the Second Judicial Circuit of Florida, except as provided herein, shall be governed by the following Uniform Procedures:
 - a. Hearings for Summary Judgments shall be scheduled by contacting the Second Judicial Circuit Case Scheduler (hereinafter Scheduler).

- i. The contact information for the current Scheduler may be found on the Second Judicial Circuit of Florida website which is located at: (<http://www.leoncountyfl.gov/2ndCircuit/ForeclosureProcedure.php>.)
 - ii. The Scheduler at the time of the execution of this order is Ina Hawkins, whose email address is HawkinsIn@leoncountfl.gov.
 - iii. The primary means of contact shall be by email.
 - iv. Only if necessary, contact may be made by telephone by calling (850) 577-8067.
- b. A maximum of twenty (20) cases may be set on each calendar by a single law firm, subject to available calendar time.
 - c. Each case may be set for a maximum of fifteen (15) minutes.
 - d. No hearing may be scheduled or the time reserved for summary judgment hearings in residential foreclosure cases until such time as the motion for summary judgment and all required supporting summary judgment evidence, including but not limited to original note, mortgage, and assignments of mortgage where applicable, and all supporting affidavits are filed with the clerk. A summary judgment hearing package shall be transmitted to the Scheduler not less than ten (10) days prior to the scheduled hearing. In the event the package is not received within such ten (10) day period, in addition to any sanction hereinafter set forth, the hearing shall be removed from the calendar. A summary judgment hearing package shall include, but not be limited to:
 - i. The Motion for Summary Judgment
 - ii. The Notice of Hearing
 - iii. The Original Note and Mortgage (copies will not be accepted. In lieu of the original note, a bond in the face amount of the requested final judgment amount conditioned upon indemnification of the maker(s) of the note for any costs, expenses or damages incurred as the result of the enforcement of the note by any other party, and issued by a Florida licensed surety, shall be filed with the clerk with such time.
 - iv. Copy of Affidavit in Support of Summary Judgment
 - v. Copy of Affidavit in Support of Attorney's Fees
 - vi. Supreme Court approved Summary Final Judgment. No additional language shall be added.
 - vii. Copy of Supreme Court approved Affidavit of Diligent Search, where applicable.

- viii. An original Notice of Sale
 - ix. An original Final Disposition Form
 - x. Sufficient copies and envelopes with sufficient postage attached, addressed to all necessary individuals to serve copies of original orders, when entered.
 - xi. Copies of any other evidence filed and necessary to support the Motion.
- e. All attorneys must appear in person. **Telephonic appearances shall not be permitted.**
- f. **All summary judgment hearings shall be held in the locations in each respective county** in the Second Judicial Circuit as follows:
- i. Franklin County: Franklin County Courthouse, 22 Market St., Hearing Room Third Floor, Apalachicola, FL 32320
 - ii. Gadsden County: Guy A. Race Judicial Complex; West Entrance; 13 N. Monroe St.; Quincy, FL 32351
 - iii. Jefferson County: Jefferson County Courthouse, Room 22, 1 Courthouse Circle, Monticello, FL 32344
 - iv. Leon County: Leon County Courthouse, 301 S. Monroe St., Room 301-B, Tallahassee, FL 32301
 - v. Liberty County: Liberty County Courthouse, 10818 N.W. State Road 20, Bristol, FL 32321.
- g. All cases where the residence is owner-occupied, and a response has been filed by the Defendant which seeks relief shall comply with the provisions of Administrative Order of the Second Judicial Circuit of Florida, 10-05, which requires completion of the requisites for the Residential Mortgage Foreclosure Mediation Program prior to a Motion for Summary Judgment being set for hearing.
- h. Upon confirmation of the hearing date, **all original notices for hearing must be filed with the clerk of court at the location hereinafter set forth within seven (7) days of setting.** In the event this provision is violated, in addition to any sanction hereinafter set forth, the case shall be removed from the calendar on which it is scheduled. The location of the courts are:
- i. Franklin County Clerk: Franklin County Courthouse, 22 Market St., Apalachicola, FL 32320
 - ii. Gadsden County Clerk: Guy A. Race Judicial Complex; West Entrance; 13 N. Monroe St.; Quincy, FL 32351

- iii. Jefferson County Clerk: Jefferson County Courthouse, 1 Courthouse Circle, Monticello, FL 32344
 - iv. Leon County Clerk: Leon County Courthouse, 301 S. Monroe St., Room 301-B, Tallahassee, FL 32301
 - v. Liberty County Clerk: Liberty County Courthouse, 10818 N.W. State Road 20, Bristol, FL 32321.
 - vi. A courtesy copy of the notice shall be sent to the Scheduler at 301 S. Monroe St., Room 301-B, Tallahassee, Florida 32301.
 - i. Once a hearing is set, it can only be canceled by order of this Court upon the Motion to Cancel being filed by any party.
 - i. The Motion and proposed Order shall be transmitted to the presiding judge in the case.
 - ii. The Motion shall not be sent to the Scheduler.
 - iii. The Motion shall be filed a minimum of five (5) days prior to the scheduled hearing, except in the event of a bona fide emergency.
 - iv. Only the Florida Supreme Court approved Motion for Cancellation shall be utilized.
2. Any Motion for Summary Judgment filed in the Wakulla County, Florida, shall be governed by the following Uniform Summary Judgment Procedures:
 - a. All foreclosure hearings, including but not limited to summary judgment hearings, shall be scheduled by contacting Judge Sauls' judicial assistant, Deanna Gravius, at The Wakulla County Community Center, Shadeville Road and Trice Land, Crawfordville, Florida 32327. This location is temporary and may be changed, and the any new location will be posted and found on the Second Judicial Circuit of Florida Website as previously set forth herein.
 - b. Hearings will be conducted by the Court at The Wakulla County Community Center, Shadeville Road and Trice Land, Crawfordville, Florida 32327. This location may be changed from time to time, and the new location will be found on the Second Judicial Circuit of Florida Website as previously set forth herein.
 - c. All parties shall strictly comply with all dates and time provisions provided at the time of the scheduling.
3. All parties shall timely cooperate with the Scheduler at all times, including but not limited to supplying all requested information in a timely manner.

4. In the event the Plaintiff fails to comply with any provision of this order, the case will be subject to immediate dismissal without prejudice, and without the necessity of further notice or hearing. This order shall be sufficient notice of this provision.

DONE AND ORDERED, in chambers at Tallahassee, Leon County, Florida, this ____ day of October, 2010.

CHARLES A. FRANCIS,
Chief Judge

Copies Furnished:

All Circuit and County Judges, Second Judicial Circuit

All Clerks of the Circuit Court, Second Judicial Circuit

Second Judicial Circuit of Florida Website

From: Charles Francis
To: Rett, Marilyn
Date: 7/16/2010 9:19 AM
Subject: Fact Sheet
Attachments: Foreclosure Fact Sheet Rev..doc

Take a quick look at this.

Westlaw Delivery Summary Report for FRANCIS, CHARLES 3499531

Date/Time of Request:	Thursday, September 13, 2007 14:57 Central
Client Identifier:	LOST NOTE
Database:	FL-ST-ANN
Citation Text:	FL ST s 673.3091
Lines:	305
Documents:	1
Images:	0

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West's F.S.A. § 673.3091

C

Effective: March 29, 2004

West's Florida Statutes Annotated [Currentness](#)

Title XXXIX. Commercial Relations (Chapters 668-688) ([Refs & Annos](#))

Chapter 673. Uniform Commercial Code: Negotiable Instruments

[Article 3](#). Negotiable Instruments ([Refs & Annos](#))

[Part III](#). Enforcement of Instruments

→ 673.3091. Enforcement of lost, destroyed, or stolen instrument

(1) A person not in possession of an instrument is entitled to enforce the instrument if:

(a) The person seeking to enforce the instrument was entitled to enforce the instrument when loss of possession occurred, or has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred;

(b) The loss of possession was not the result of a transfer by the person or a lawful seizure; and

(c) The person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(2) A person seeking enforcement of an instrument under subsection (1) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, [s. 673.3081](#) applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

CREDIT(S)

[Laws 1992, c. 92-82, § 2](#). Amended by [Laws 2004, c. 2004-3, § 1, eff. March 29, 2004](#).

UNIFORM COMMERCIAL CODE COMMENT

<For UCC acknowledgments, see FL ST UCC Acknowledgments.>

1993 Main Volume

Section 3-309 is a modification of former Section 3-804. The rights stated are those of "a person entitled to enforce the instrument" at the time of loss rather than those of an "owner" as in former Section 3-804. Under subsection (b), judgment to enforce the instrument cannot be given unless the court finds that the defendant will be adequately protected against a claim to the instrument by a holder that may appear at some later time. The court is given discretion in determining how adequate protection is to be assured. Former Section 3-804 allowed the court to "require security indemnifying the defendant against loss." Under Section 3-309 adequate protection is a flexible concept. For example, there is substantial risk that a holder in due course may make a demand for payment if the instrument was payable to bearer when it was lost or stolen. On the other hand if the instrument was payable to the person who lost the instrument and that person did not indorse the instrument, no other person could be a holder of

West's F.S.A. § 673.3091

the instrument. In some cases there is risk of loss only if there is doubt about whether the facts alleged by the person who lost the instrument are true. Thus, the type of adequate protection that is reasonable in the circumstances may depend on the degree of certainty about the facts in the case.

HISTORICAL AND STATUTORY NOTES

Amendment Notes:

[Laws 2004, c. 2004-3, § 1](#), rewrote subsec. (1)(a), which formerly read:

"(a) The person was in possession of the instrument and entitled to enforce it when loss of possession occurred;"

Prior Laws:

[Fla.St.1991, § 673.804](#).

Laws 1965, c. 65-254, § 1.

Uniform Law:

This section is similar to § 3-309 of the Uniform Commercial Code. See 2 Uniform Laws Annotated, Master Edition.

CROSS REFERENCES

Burden of establishing signatures, defenses and holder in due course, see [§ 673.3081](#).

Indemnity in action on lost negotiable instrument, see [§ 69.061](#).

Lost or destroyed bond, replacement, indemnity, see [§ 132.32](#).

Re-establishment of lost papers, etc., see [§ 71.011 et seq.](#)

Records destroyed by fire, abstracts as evidence, see [§ 92.25 et seq.](#)

Warrants of comptroller, lost, see [§ 17.13](#).

RESEARCH REFERENCES

Encyclopedias

[9 Am. Jur. Proof of Facts 573](#), Promissory Notes and Other Negotiable Instruments.

[FL Jur. 2d Banks & Lending Institutions § 238](#), Lost, Destroyed, or Stolen Checks.

[FL Jur. 2d Banks & Lending Institutions § 239](#), Lost, Destroyed, or Stolen Checks -- Cashier's, Teller's, or Certified Checks.

[FL Jur. 2d Bills, Notes, & Other Commercial Paper § 182](#), Replacement and Enforcement of Lost, Stolen, or Destroyed Instruments.

[FL Jur. 2d Bills, Notes, & Other Commercial Paper § 183](#), Inability to Produce Instrument.

[FL Jur. 2d Bills, Notes, & Other Commercial Paper § 184](#), Burden of Proof.

West's F.S.A. § 673.3091

[FL Jur. 2d Bills, Notes, & Other Commercial Paper § 185](#), Providing Security to Protect Defendant.

[FL Jur. 2d Bills, Notes, & Other Commercial Paper § 281](#), Proof, Generally.

[FL Jur. 2d Bills, Notes, & Other Commercial Paper § 284](#), Lost, Destroyed, or Stolen Instruments.

[FL Jur. 2d Bills, Notes, & Other Commercial Paper § 341](#), Right to Enforce Instrument.

[FL Jur. 2d Lost and Destroyed Instruments and Records § 20](#), Pleadings.

[FL Jur. 2d Lost and Destroyed Instruments and Records § 21](#), Indemnity.

[FL Jur. 2d Mortgages & Deeds of Trust § 276](#), Production of Instruments.

[FL Jur. 2d Mortgages & Deeds of Trust § 277](#), Production of Instruments -- Lost Instruments.

Forms

[Florida Pleading and Practice Forms § 77:39](#), Enforcement of Lost, Destroyed, or Stolen Instrument.

[Trawick's Florida Practice and Procedure Forms § 4-115](#), Complaint; Promissory Note, Reestablishment and Enforcement.

[Trawick's Florida Practice and Procedure Forms § 4-122](#), Complaint; Reestablish Documents.

NOTES OF DECISIONS

Actions [2](#)

Assignment of enforcement rights [4](#)



Complaint [3](#)


Foreclosure [5](#)


Lost instrument [1](#)

Promissory notes [6](#)

[1](#). Lost instrument

Payee was entitled to judgment on two promissory notes after complying with statute that specified the requirements for a holder to enforce an instrument when the original is not available; payee showed that notes had been lent to maker for use in unrelated litigation, payee could not reasonably obtain the notes when they were last known to be in possession of maker's attorney, and payee offered copies and testimony to establish the terms of the instruments and payee's right to enforce them. [Connelly v. Matthews, App. 4 Dist., 899 So.2d 1141 \(2005\)](#), rehearing denied. Bills And Notes  443(2); Bills And Notes  517

Mortgagee's filing of duplicate copy of mortgage was sufficient to satisfy statutory requirements in foreclosure action, even though mortgagors asserted that original was required to be filed; original promissory note was required to be filed to prove mortgagors' indebtedness, but mortgage document was merely incidental to proof of indebtedness. [Perry v. Fairbanks Capital Corp., App. 5 Dist., 888 So.2d 725 \(2004\)](#). Mortgages  464

An owner of a lost, stolen, or destroyed instrument may maintain an action to recover upon the note by showing proof of his or her ownership, facts that prevent the owner from producing the instruments, and the terms of the instrument, without first reestablishing the instrument. [Lawyers Title Ins. Co., Inc. v. Novastar Mortg., Inc., App. 4 Dist., 862 So.2d 793 \(2003\)](#), rehearing denied, review denied [880 So.2d 1212](#). Lost Instruments  16

West's F.S.A. § 673.3091

Creditor was not required to prove how he lost possession of note that was lost or destroyed in order to enforce note. [Deakter v. Menendez, App. 3 Dist., 830 So.2d 124 \(2002\)](#), reconsideration denied. Lost Instruments 🔑 2.1

Creditor was not required to have physical possession of lost or destroyed note when the loss occurred in order to enforce note against debtor. [Deakter v. Menendez, App. 3 Dist., 830 So.2d 124 \(2002\)](#), reconsideration denied. Lost Instruments 🔑 2.1

Trial court erred in ruling that creditor could not prove loss of note he was seeking to enforce; creditor swore under oath that he did not assign or transfer the note and that the original was lost or destroyed, and debtor presented no evidence to the contrary. [Deakter v. Menendez, App. 3 Dist., 830 So.2d 124 \(2002\)](#), reconsideration denied. Lost Instruments 🔑 8(3)

Lost promissory note in connection with a mortgage was a negotiable instrument, and thus establishing the lost instrument was governed by a different statute, containing more stringent requirements, than the statute generally providing for establishing lost papers, records or files. [Mason v. Rubin, App. 4 Dist., 727 So.2d 283 \(1999\)](#), rehearing denied. Lost Instruments 🔑 2.1

Mortgagees who sought to reestablish lost note and mortgage and to foreclose mortgage had presented prima facie case to recover on lost or stolen instrument pursuant to this section; mortgagee testified she placed original note and mortgage in desk drawer in room in her home and that the documents mysteriously disappeared, testified that a number of people, including mortgagor and personal representative for mortgagor's estate, had access to room in which documents were kept, and identified copies of original note and mortgage. [Gutierrez v. Bermudez, App. 5 Dist., 540 So.2d 888 \(1989\)](#). Lost Instruments 🔑 23(1)

Where mortgage that was used to establish terms of allegedly lost note executed by mortgagor on January 6, 1975, after mortgagor reached age of 18, was controverted and challenged as to authenticity and alteration of its original terms, and it was clear from inspection of mortgage introduced at trial that it had been altered, trial court did not abuse its broad discretion in granting new trial in mortgage foreclosure action because note dated November 4, 1974, was executed when mortgagor was a minor and mortgagees failed to reestablish allegedly lost note dated January 6, 1975. [Barber v. Ehrich, App. 5 Dist., 394 So.2d 220 \(1981\)](#). Mortgages 🔑 482

Question of sufficiency of proof of loss of note sued upon in action by owner of lost instrument rests largely within discretion of the trial court. [Barber v. Ehrich, App. 5 Dist., 394 So.2d 220 \(1981\)](#). Lost Instruments 🔑 23(3)

Where cashier's check could not be found after death of payee, bank would not be required to pay amount of check to payee's administratrix until after five year statute of limitations had run on check unless administratrix agreed to furnish bank an indemnity bond which would protect it against any liabilities which might be incurred by reason of payment of its outstanding cashier's check. [Atlantic Nat. Bank of West Palm Beach v. Havens, 45 So.2d 342 \(1950\)](#). Banks And Banking 🔑 188.5; Banks And Banking 🔑 189

2. Actions

Under Florida law, purported assignee of unpaid promissory note and mortgage could not foreclose on mortgage, where it did not have the original note in its possession, and it did not reestablish the note. [Dasma Investments, LLC v. Realty Associates Fund III, L.P., S.D.Fla.2006. 459 F.Supp.2d 1294](#). Mortgages 🔑 464

The owner of a lost, destroyed or stolen negotiable instrument could proceed by direct action against the obligors, that is, the makers and endorsers, without first reestablishing the lost, destroyed or stolen instrument in separate action. [Dunn v. Willis, App. 5 Dist., 599 So.2d 271 \(1992\)](#). Lost Instruments 🔑 3

Owner of instrument which is lost may maintain action and recover upon instrument upon proof of his ownership, proof of acts which prevent his production of instrument, and proof of terms of instrument. [Barber v. Ehrich, App. 5](#)

West's F.S.A. § 673.3091

[Dist., 394 So.2d 220 \(1981\)](#). Lost Instruments 🔑 16

3. Complaint

Although loan document owner failed to allege that it was ever in possession of the promissory note or that it was entitled to enforce the note when it was lost, owner should have been allowed to amend complaint to state cause of action for foreclosure through proof of assignable right of enforcement of lost note, even though an opportunity to amend had been previously granted. [National Loan Investors, L.P. v. Joymar Associates, App. 3 Dist., 767 So.2d 549 \(2000\)](#). Mortgages 🔑 458

4. Assignment of enforcement rights

Right to enforce lost promissory note was not properly assigned, and thus, mortgagee by assignment could not maintain cause of action to enforce promissory note or foreclose mortgage; neither mortgagee by assignment nor its predecessor in interest possessed the note and did not otherwise satisfy the requirement of statute governing the enforcement of lost, destroyed, or stolen instruments, at time of assignment. [State Street Bank and Trust Co. v. Lord, App. 4 Dist., 851 So.2d 790 \(2003\)](#). Mortgages 🔑 218.8; Mortgages 🔑 248; Mortgages 🔑 417

Mortgagee by assignment could not pursue a mortgage foreclosure in the absence of proof that either the mortgagee or its assignor ever had possession of missing promissory note. [State Street Bank and Trust Co. v. Lord, App. 4 Dist., 851 So.2d 790 \(2003\)](#). Mortgages 🔑 417

Evidence supported finding that voiding of mortgages and notes by wife and her first husband was fraudulent, and thus second husband was entitled to foreclose on real property despite his inability to produce original note and mortgage; trial court found that mortgages were actually voided after final judgment of dissolution of marriage between wife and second husband to try to avoid consequences of first husband's assignments of notes and mortgages to second husband. [Slizyk v. Smilack, App. 4 Dist., 825 So.2d 428 \(2002\)](#), rehearing denied, review denied [842 So.2d 846](#). Mortgages 🔑 417; Mortgages 🔑 464

Creditor effectively transferred any rights he had under note to trust, regardless of whether the note was assigned before or after its loss or destruction; under terms of general assignment, all of creditor's property, including the note, were assigned to trust. [Deakter v. Menendez, App. 3 Dist., 830 So.2d 124 \(2002\)](#), reconsideration denied. Bills And Notes 🔑 214

Right of enforcement of lost, destroyed, or stolen promissory note can be assigned when recognizing such a right would prevent defendants in foreclosure actions from receiving a windfall. [National Loan Investors, L.P. v. Joymar Associates, App. 3 Dist., 767 So.2d 549 \(2000\)](#). Mortgages 🔑 464





5. Foreclosure

Purported assignee of unpaid promissory note and mortgage fraudulently joined non-diverse corporate mortgagor in its removed action to foreclose on note and mortgage, although there was evidence of lack of payment, where assignee did not have original promissory note, and, under Florida law, it could not foreclose mortgage which secured the note without the original note, or without reestablishing the note. [Dasma Investments, LLC v. Realty Associates Fund III, L.P., S.D.Fla.2006, 459 F.Supp.2d 1294](#). Removal Of Cases 🔑 36

6. Promissory notes

Under Florida law, if a party is not in possession of the original promissory note, and cannot reestablish it, the party simply may not prevail in an action on the note. [Dasma Investments, LLC v. Realty Associates Fund III, L.P., S.D.Fla.2006, 459 F.Supp.2d 1294](#). Bills And Notes 🔑 516; Bills And Notes 🔑 524; Mortgages 🔑 464

West's F.S.A. § 673.3091

Under Florida law, a promissory note is a negotiable instrument, and a party suing on a promissory note, whether just on the note itself or together with a claim to foreclose on a mortgage securing the note, must therefore be in possession of the original of the note or reestablish the note. [Dasma Investments, LLC v. Realty Associates Fund III, L.P., S.D.Fla.2006, 459 F.Supp.2d 1294](#). Bills And Notes  150(1); Bills And Notes  516; Bills And Notes  524; Mortgages  464

West's F. S. A. § 673.3091, FL ST § 673.3091

Current through Chapter 322 (End) of the 2007 First Regular Session and Special B Session of the Twentieth Legislature

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END OF DOCUMENT

From: Kristine Slayden <slaydenk@flcourts.org>
To: Trial Court Chief Judges <TrialCourtChiefJudges@flcourts.org>, "TrialCou...
CC: Trial Court Budget Commission <TrialCourtBudgetCommission@flcourts.org>,...
Date: 5/21/2010 2:42 PM
Subject: Foreclosure and Economic Recovery Non-recurring Funding FY 2010/11
Attachments: ForeclosureandEconomicRecovery_FundingPlans_Updated05212010.pdf; Foreclosur
e and Economic RecoveryResponses from Circuits_May 2010_v2.pdf; 62% Estimat
ed RPFM Backlog.pdf

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<mailto:burked@flcourts.org> by COB Tuesday, May 25th. Please refer to the bottom of this email for further submission instructions.

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

Issue 1: FY 2010/11 Funding Allocations Approved

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

Issue 2: Types of Cases and Disposition Goals Approved

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

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

Issue 3: Budget Policy Considerations Approved

- a) In order to comply with legislative intent, any expenditure of any type utilizing this funding is strictly limited to direct support of the backlog reduction of the approved case types listed in Issue 2.
- b) In order to ensure that senior judges who are assigned to the Foreclosure and Economic Recovery initiative are paid with the appropriate funds, the current senior judge application will be modified to allow circuits to specify from which funding source the senior judge should be paid. The Trial Court Administrators are responsible for ensuring that the information is reported properly.
- c) Expenditures from the Expense category are limited to intra-circuit travel for staff, intra- and inter-circuit travel for Senior Judges, consumable office supplies, postage, copying, printing and reproduction. To maximize the Expense allotment, circuits are encouraged to use existing resources or surplus furnishings for any office furniture needs for OPS staff and/or Senior Judges. Subscriptions and the like are not allowable expenditures for this funding, neither are computers or other communication devices

as those items are a county funding responsibility.

d) A contingency for the Expense category was approved in the original proposal and factored into the appropriated amount. In order to access these contingency funds, a circuit must have exhausted its Foreclosure and Economic Recovery Expense allotment. Requests for additional Expense are to be made in writing to the TCBC Chair, with a copy to the TCBC Budget Management Committee Chair, and to the State Courts Administrator. The request must provide a complete, detailed explanation of how Expense funding came to be exhausted, what steps were taken to alleviate the impending shortfall, the amount requested and how that amount was calculated.

Issue 4: Funding/Plan Monitoring Approved

1. 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.
2. The Supreme Court Inspector General will also be reviewing the Foreclosure and Economic Recovery initiative for potential inclusion in the branch's FY 2010/11 audit plan.

Issue 5: Clerk Assistance Approved

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

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

Directions:

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

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

Element	Position	Maximum rate
Magistrates:	Magistrate	\$35.48 hourly
Case Management:	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

Hillsborough and Pinellas	Senior Secretary	\$12.10 hourly w/ CAD -
Broward, Dade, Monroe, Palm Beach	Senior Secretary	\$12.48 hourly w/ CAD -

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)

Foreclosure and Economic Recovery Funding Proposal In-Courtroom Resources Only

Circuit	County	Target Backlog Reduction	General Magistrate OPS	General Magistrate Contracted Services	Senior Judge Days	Estimated General Magistrate FTE	Senior Judge		Maximum Courtrooms
							Estimated FTE	Estimated Days	
1	Escambia						0.09	24	1
	Okaloosa						0.12	32	1
	Santa Rosa						0.05	12	1
	Walton						0.09	24	1
	Total	8,035	\$0	\$0	\$32,200	0.00	0.35	92	4
2	Franklin						0.04	10	1
	Gadsden						0.04	10	1
	Jefferson						0.04	10	1
	Leon						0.04	10	1
	Liberty						0.04	10	1
	Wakulla						0.04	10	1
	Total	2,719	\$0	\$0	\$21,180	0.00	0.24	60	6
3	Columbia								
	Dixie								
	Hamilton								
	Lafayette								
	Madison								
	Suwannee								
	Taylor								
	Total	822	\$0	\$0	\$0	0.00	0.00	0	0
4	Clay						0.63	165	1
	Duval						0.84	218	2
	Nassau						0.42	110	1
	Total	13,344	\$0	\$0	\$172,729	0.00	1.89	493	4

Foreclosure and Economic Recovery Funding Proposal In-Courtroom Resources Only

Circuit	County	Target Backlog Reduction	General Magistrate OPS	General Magistrate Contracted Services	Senior Judge Days	Estimated General Magistrate FTE	Senior Judge		Maximum Courtrooms
							Estimated FTE	Estimated Days	
5	Citrus						0.10	25	1
	Hernando						0.10	25	1
	Lake						0.19	51	1
	Marion						0.10	25	1
	Sumter						0.00	0	0
	Total		12,357	\$0	\$0	\$44,100	0.00	0.49	126
6	Pasco						0.46	118	2
	Pinellas						0.46	119	2
	Total		24,424	\$0	\$0	\$82,950	0.00	0.92	237
7	Flagler						0.25	65	1
	Putnam						0.25	65	1
	St. Johns						0.25	65	1
	Volusia						0.25	65	1
	Total		13,383	\$0	\$0	\$91,000	0.00	1.00	260
8	Alachua					0.00	0.19	50	1
	Baker					0.10	0.00	0	1
	Bradford					0.10	0.00	0	1
	Gilchrist					0.10	0.00	0	1
	Levy					0.10	0.00	0	1
	Union					0.10	0.00	0	1
	Total		1,597	\$0	\$37,035	\$17,500	0.50	0.19	50
9	Orange						2.00	470	2
	Osceola						1.00	235	1
	Total		31,372	\$0	\$0	\$246,750	0.00	3.00	705

Foreclosure and Economic Recovery Funding Proposal In-Courtroom Resources Only

Circuit	County	Target Backlog Reduction	General Magistrate OPS	General Magistrate Contracted Services	Senior Judge Days	Estimated General Magistrate FTE	Senior Judge		Maximum Courtrooms
							Estimated FTE	Estimated Days	
10	Hardee						0.00	0	0
	Highlands						0.00	0	0
	Polk						0.20	52	1
	Total	8,047	\$0	\$0	\$18,200	0.00	0.20	52	1
11	Dade	54,532	\$82,481	\$0	\$171,500	1.00	2.00	490	3.5
12	Desoto						0.00	0	0
	Manatee						0.52	135	2
	Sarasota						0.52	135	2
	Total	15,845	\$0	\$0	\$94,500	0.00	1.04	270	4
13	Hillsborough	23,672	\$0	\$0	\$195,000	0.00	2.14	557	2
14	Bay						0.36	92	1
	Calhoun						0.00	0	0
	Gulf						0.00	0	0
	Holmes						0.00	0	0
	Jackson						0.00	0	0
	Washington						0.00	0	0
	Total	2,873	\$0	\$0	\$32,430	0.00	0.36	92	1
15	Palm Beach	39,309	\$0	\$0	\$140,000	0.00	1.54	400	2
16	Monroe	1,656	\$0	\$14,400	\$49,700	0.18	0.55	142	3
17	Broward	35,659	\$0	\$0	\$87,500	0.00	0.96	250	2
18	Brevard						1.91	496	2
	Seminole						0.95	248	1
	Total	19,252	\$0	\$0	\$260,643	0.00	2.86	744	3

Foreclosure and Economic Recovery Funding Proposal In-Courtroom Resources Only

Circuit	County	Target Backlog Reduction	General Magistrate OPS	General Magistrate Contracted Services	Senior Judge Days	Estimated General Magistrate FTE	Senior Judge		Maximum Courtrooms
							Estimated FTE	Estimated Days	
19	Indian River						0.18	48	1
	Martin						0.18	48	1
	Okeechobee						0.00	0	0
	St. Lucie						0.55	144	1
	Total	12,844	\$0	\$0	\$84,000	0.00	0.91	240	3
20	Charlotte					0.00	0.15	40	1
	Collier					0.20	0.62	162	1
	Glades					0.00	0.15	38	1
	Hendry					0.00	0.07	18	1
	Lee					1.50	0.69	180	2
	Total	25,423	\$135,470	\$0	\$153,300	1.70	1.68	438	6
State Total		347,165	\$217,951	\$51,435	\$1,995,182	3.38	22.33	5,698	66

Note: Information provided for Maximum Courtrooms in circuits 13 and 14 represent Hearing Rooms. All totals may not be exact due to rounding.

**RESIDENTIAL FORECLOSURE PROCEDURES FOR LEON COUNTY, FLORIDA
BEGINNING AUGUST 2, 2010**

The following procedures and requirements will take effect on August 2, 2010 for all Summary Judgment Motions in residential mortgage foreclosure cases for Leon County. Compliance with these procedures and requirements is **mandatory**.

1. Hearings on Motions for Summary Judgment will be scheduled by contacting the Second Judicial Circuit's Foreclosure Case Scheduler at 850-577-8067 or by email at _____leoncountyfl.gov. A maximum of 10 cases can be set in ½ hour increments.

2. No hearing time may be reserved for summary judgment hearings in foreclosure cases until the motion and required summary judgment evidence are filed with the Clerk, including the Original Note and Mortgage. No pleadings or original documents shall be sent to the Second Judicial Circuit's Foreclosure Case Scheduler or the Judge. The Court will not proceed with the hearing unless the original note and mortgage are provided or an approved bond in the amount of principal and interest claimed is posted.

3. COUNSEL FOR PLAINTIFF MUST APPEAR IN PERSON AT THE MOTION FOR SUMMARY JUDGMENT HEARINGS. TELEPHONIC APPEARANCE IS NO LONGER PERMITTED.

4. Hearings will take place at: Leon County Courthouse, 301 South Monroe Street, Room 301-B, Tallahassee, FL 32301.

5. All cases where the residence is owner-occupied and a pleading has been filed by the owner seeking relief must be mediated first before a hearing on a Motion for Summary Judgment can be set, (*see Administrative Order 2010-05*).

6. Upon confirmation of the hearing date and time, the original Notice of Hearing must be filed with the Clerk of Court within 7 days of confirmation and a courtesy copy sent to: Foreclosure Case Scheduler, Leon County Courthouse, 301 South Monroe Street, Room 301-B, Tallahassee, FL 32301.

7. If a Notice of Hearing is not filed with the court within 7 days, the hearing is taken off the calendar

8. Once set, a hearing can only be canceled by motion using the "Motion to Cancel and Reschedule Foreclosure Hearing" attached as Exhibit "A," filed with the clerk, and submitted with a proposed order. **Motions to cancel must be made to the Judge assigned to the case, not sent to the Scheduler.** Cancellations must be filed at least 5 days in advance where possible.

9. All mortgage foreclosure summary judgment packets must be sent **no later than 10 days prior to the scheduled hearing. If complete packets are not received at least 10 days in advance of the hearing, then this will result in cancellation of the hearing.** The package shall contain the original proposed final judgment on the Supreme Court mandated form, with no additional language added; a original Notice of Sale; an original Final Disposition Form; and sufficient copies and addressed envelopes with postage attached to serve copies of the originals when entered.

10. The Supreme Court approved Final Judgment, Affidavit of Diligent Search, and Motion to Cancel Foreclosure Sale must be utilized. The forms can be found on the Second Judicial Circuit's website at www.leoncountyfl.gov/2ndCircuit or the Leon County Clerk of Court's website at <http://www.clerk.leon.fl.us>.

EXHIBIT "A"
MOTION TO CANCEL AND RESCHEDULE FORECLOSURE HEARING

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
LEON COUNTY, STATE OF FLORIDA

_____,
Plaintiff,

vs.

Case No.: _____

_____,
Defendant.

_____ /

MOTION TO CANCEL AND RESCHEDULE FORECLOSURE HEARING

Plaintiff moves to cancel and reschedule the mortgage foreclosure hearing because:

1. On _____ this Court scheduled a foreclosure hearing for _____, 20__.

2. The hearing needs to be canceled for the following reason(s):

a. _____ Plaintiff and Defendant are continuing to be involved in loss mitigation;

b. _____ Defendant is negotiating for the sale of the property that is the subject of this matter and Plaintiff wants to allow the Defendant an opportunity to sell the property and pay off the debt that is due and owing to Plaintiff.

c. _____ Defendant has entered into a contract to sell the property that is the subject of this matter and Plaintiff wants to give the Defendant an opportunity to consummate the sale and pay off the debt that is due and owing to Plaintiff.

d. _____ Defendant has filed a Chapter ____ Petition under the Federal Bankruptcy Code;

e. _____ Plaintiff has ordered but has not received a statement of value/appraisal for the property;

f. _____ Plaintiff and Defendant have entered into a Forbearance Agreement;

g. _____ Other

3. If this Court cancels the foreclosure hearing, Plaintiff moves that it be rescheduled.

I hereby certify that a copy of the foregoing Motion has been furnished by U.S. mail postage prepaid, facsimile or hand delivery to _____ this _____ day of ____, 20__.

Dated: _____

Signature of Plaintiff or Plaintiff's Counsel
Printed Name: _____
Fla. Bar No.: _____
Address: _____
City, State, Zip: _____
Phone: _____
E-mail: _____

From: Charles Francis
To: All Judges
Date: 2/11/2010 11:20 AM
Subject: Foreclosure Forms
Attachments: OP-SC09-1460-CivilRules.doc

FYI. Rules opinion attached this time!

From: John Cooper
To: Francis, Charles
Date: 10/28/2010 4:14 PM
Subject: Foreclosure Procedures

Charlies, I hate to be a "squeaky wheel" but I have several concerns with some foreclosures procedures I am seeing. I tried to get you on the phone today but could not reach you.

Today, on a case (US Bank - 10-1156- CAA) I received a notice of non-compliance with administrative order from the RMFM program stating that the plaintiff had failed to file form "A" with the complaint as required by the administrative order. Also, the notice stated that the Plaintiff had failed to pay the Program Manager fee at the time suit was filed in violation of the administrative order.

I was then presented with an order of dismissal for this violation. The order did not contain a service list.

I checked the court file and discovered that in fact form "A" was filed on October 13, 2010, well in advance of the date of the notice of non-compliance. Now I have concerns as to whether the statement that the plaintiff failed to pay the program manager fees at the time of filing suit is accurate.

I checked the administrative order and it does require the fee filing at the time of suit. However, this fee appears to be owed only if the defendant requests mediation. I don't understand the rationale for requiring a filing of this fee before we even know that there is going to be a mediation. If no mediation is requested (which I suspect is in a majority of the cases) then I assume the mediation fee will have to be sent band to the plaintiff.

I did not find anything in the order (I may have missed it since it is lengthy) putting the plaintiff on notice that the case will be dismissed for failing to pay the fee even if it ultimately turns out to be futile when the defendant does not request mediation. What authority do we have to dismiss under this scenario? Does this speed up the processing of foreclosures or does it slow them down?

Another issue I have I covered with you by email this morning. Apparently on three summary judgments recently the plaintiff filed a notice of cancellation of the hearing instead of filing a motion to cancel. Not only was the summary judgment denied but now I apparently am obligated to set final hearings on these cases instead of some other form of sanction or simply resetting the motion for hearing. Does it speed up handling these cases to require trials for failure to file a motion to continue. I understand different judges have different approaches to this but I handled hundreds of foreclosures without requiring a motion to continue and experience very little problem.

I have tried on residential mortgage foreclosure case and it took a substantial amount of time in motion hearings, pretrial, trial, and motion for rehearing.

I would appreciated discussing these matters with you at your earliest convenience.

JCC

From: "Farina, Joseph" <JFarina@jud11.flcourts.org>
To: "Laurent, John" <jlaurent@Jud10.FLCourts.org>, "Steinbeck, Margaret" <MS...>
Date: 10/14/2010 2:13 PM
Subject: Foreclosure project

John:

Given the financial service industry's abating pending foreclosure actions, reviewing final judgments based on questionable affidavits and providing mortgage modifications, is it needed, beneficial or advisable for representatives of the court (perhaps the TCBC Executive Committee) to meet with the President of the Senate and Speaker of the House (or their chiefs of staff) to discuss whether the court's foreclosure project and legislative funding expenditures continue beyond December 31, 2010?

If the answer is yes, would a separate discussion with our business partners be needed before or after such a meeting; and should the clerk's be part of this process, and if so, when?

Joe

From: John Cooper
To: Francis, Charles
Date: 10/28/2010 12:18 PM
Subject: Foreclosure

I have three orders denying summary judgement and effectively requiring me to set these cases for evidentiary hearings. They were entered for not moving to cancel the sj hearing instead they filed a notice of cancellation. The last evidentiary sj hearing I had took over a day.

I would like to discuss this procedure with you.

I am going to lunch and will be back in the office by 1:15.

JCC

Foreclosure and Economic Recovery Funding Proposal FY 2010/11 Circuit Allocations

Circuit	General Magistrate/Senior Judge				Case Management			General Magistrate/Senior Judge Administrative Support			Mediation Administrative Support			Total	
	GM OPS	GM Contracted Services	GM/Senior Judge Expense	Senior Judge Days	OPS	Contracted Services	Expenses	OPS	Contracted Services	Expenses	OPS	Contracted Services	Expenses		
1			\$5,200	\$32,200	\$63,179		\$5,786							\$106,365	
2			\$2,426	\$21,180	\$40,142		\$4,800	\$34,217		\$3,600				\$106,365	
3					\$38,171			\$26,090						\$64,261	
4				\$172,729				\$40,000						\$212,729	
5				\$44,100				\$140,430		\$113	\$28,086			\$212,729	
6			\$6,514	\$82,950	\$117,378		\$3,000	\$104,360		\$3,550				\$317,752	
7			\$3,351	\$91,000	\$117,378		\$1,000							\$212,729	
8		\$37,035	\$2,500	\$17,500	\$39,126		\$5,204		\$5,000					\$106,365	
9				\$246,750	\$178,707									\$425,457	
10				\$18,200	\$42,119		\$8,980	\$28,086		\$8,980				\$106,365	
11	\$82,481		\$2,597	\$171,500	\$457,782		\$20,925	\$120,568		\$6,200				\$862,053	
12			\$1,411	\$94,500	\$114,000		\$2,818							\$212,729	
13			\$2,500	\$195,000	\$168,477		\$5,355	\$56,172						\$427,504	
14			\$5,000	\$32,430	\$36,115		\$2,500	\$27,820		\$2,500				\$106,365	
15			\$10,000	\$140,000	\$313,008		\$17,000	\$161,475		\$5,057				\$646,540	
16		\$14,400	\$12,725	\$49,700				\$27,989		\$1,551				\$106,365	
17				\$87,500	\$547,549		\$11,491							\$646,540	
18				\$260,643				\$58,451						\$319,094	
19			\$12,000	\$84,000	\$84,238		\$4,405	\$28,086						\$212,729	
20	\$135,470			\$153,300	\$39,126			\$71,472			\$26,090			\$425,458	
Sub Total	\$217,951	\$51,435	\$66,224	\$1,995,182	\$2,396,495	\$0	\$93,264	\$925,216	\$5,000	\$31,551	\$54,176	\$0	\$0	\$5,836,494	
														2% Expense Contingency	\$119,112
														Executive Direction	\$44,394
														Grand Total	\$6,000,000

From: Angela Dempsey
To: Cooper, John; Francis, Charles; Fulford, Jackie; Lewis, Terry; Shelf...
Date: 10/22/2010 9:45 AM
Subject: Foreclosures being handled by Stern's Firm

Stern is being investigated by the AG & the Bar. Are you guys just carefully scrutinizing his firm's orders or not signing them?

see <http://www.sun-sentinel.com/business/fl-foreclosures-florida-bar-20101020,0,4116231.story>

From: Charles Francis
To: Rett, Marilyn
Date: 10/7/2010 9:31 AM
Subject: Foreclosures
Attachments: Draft Administrative Order 10-09.doc

Please finalize.

From: Cheri Granston <cherig6@yahoo.com>
To: <Francisc@leoncountyfl.gov>
Date: 12/31/2009 11:14 AM
Subject: From Cheri-ann when should I start

Good Morning Judge Francis,

I trust that your holidays went well. I am currently out of town and will return to Tallahassee next Thursday on January 7. When would you like for me to come in? Classes start on January 11. I was thinking I could start at the courthouse that morning as well at around 8:30am if you would like. Please get back to me at your earliest convenience. Again, thank you for inviting me to return for another semester.

Sincerely,

Cheri-ann Granston
3909 Reserve Dr. Apt. 334
Tallahassee, FL 32311
(954) 464-6572

From: Laura Rush <RushL@flcourts.org>
To: Trial Court Chief Judges <TrialCourtChiefJudges@flcourts.org>, "JudgeKev...
CC: Trial Court Administrators <TrialCourtAdministrators@flcourts.org>, Tria...
Date: 10/18/2010 11:52 AM
Subject: FW: October 18 JAC Conference Call
Attachments: Servicerstatementandframework101310.pdf

Judge Bailey requested that the attached additional document be available to you all for the conference call today.

Laura Rush
General Counsel
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, FL 32399-1900
(850) 488-1824

From: Debbie Howells
Sent: Friday, October 15, 2010 2:59 PM
To: Trial Court Chief Judges; Judge Kevin M. Emas
Cc: Trial Court Administrators; Trial Court Budget Exec Comm; Judge Judith L. Kreeger; Judge Jennifer Bailey; Lisa Goodner; Laura Rush; Blan Teagle; Charlotte Jerrett; Brenda Johnson; Dorothy Wilson; Greg Youchock; Greg Smith; Kristine Slayden; Sharon Buckingham; P.J. Stockdale; Alan Neubauer; Debbie Howells; Gary Phillips; Judge Wayne Miller
Subject: October 18 JAC Conference Call

Chief Judge Haworth, Chair of the Judicial Administration Committee, asked us to send you the attached agenda packet for the upcoming conference call, which is scheduled to begin at 12:00 noon on Monday, October 18, 2010. To participate in the call, dial 1-888-808-6959 and, when prompted, enter conference code 9425056 followed by the # key.

Members of the Executive Committee of the Trial Court Budget Commission are welcome to attend, if their schedules permit.

If you have any difficulty accessing the agenda packet or have any questions about the call, please let me know.

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

From: Beverly Brown <BrownB@flcourts.org>
To: Abdiel Ortiz <ortiza@fljud13.org>, Bill Hale <whale@circuit7.org>, "Bret...
CC: "brooke.jones@flcourts1.gov" <brooke.jones@flcourts1.gov>, "ctadsg1@o...
Date: 9/9/2009 12:09 PM
Subject: FW: Registration Now Open for Tenants' Rights in ForeclosuresCourse 10/2/09

R

FYI - We sent the following email to all county court judges and senior judges this morning. There are a number of senior judges who do not use email so we would appreciate your assistance in notifying senior judges in your circuit of this educational opportunity.

[cid:image002.jpg@01CA3146.4294CC00]
Tenants' Rights in Foreclosures Videoconference
for County Court Judges and Senior Judges

Friday, October 2, 2009
12:15 p.m. - 1:30 p.m. ET

Faculty and Course Content

Broward County Court Judge Jane Fishman will present this timely topic to include the following objectives:

- * Identify the issues facing renters whose homes are in mortgage or association foreclosure;
- * Correctly apply 12 USC Sec. 5220 to ameliorate some of those issues; and
- * Identify issues that may be raised that are not answered by the recent federal legislation.

Location

This course will be offered LIVE from a videoconferencing location at each circuit. Contact your local Court Technology Officer for the location in your circuit.

Continuing Judicial Education Credit (CJE) and Evaluation

A maximum of 1.25 hours of CJE credit for judges is available. Sign in on the form provided at your location. You will receive an email after the course for instructions on completing online CJE and evaluation forms.

How to Register

Space may be limited in some locations so registration is required. Use the password rent to register at this link -

<http://www.flcourts.org/UltimateSurvey/Surveys/TakeSurvey.aspx?s=27C0DF85C3A940D1815697CEB9FFE0FD>

The deadline to register is September 25, 2009. If you are a person who needs an accommodation in order to register or participate, please submit your request to Beverly Brown at 850-922-5084 or brownb@flcourts.org.

Contact Information

Bart Moore, Court Education Senior Attorney
850-413-9642 or mooreb@flcourts.org<<mailto:mooreb@flcourts.org>>

Website

http://intranet.flcourts.org/osca/Judicial_Education/DistanceLearning/2009TenantsRights/main.html

From: Charles Francis
To: Pelletier, Dennis; Slayden, Grant
Date: 5/26/2010 9:46 AM
Subject: Fwd: Foreclosure and Economic Recovery Non-recurring Funding FY 2010/11
Attachments: Foreclosure and Economic Recovery Non-recurring Funding FY 2010/11

Let me know if we need to do anything.

From: Charles Francis
To: Slayden, Grant
Date: 1/7/2010 9:19 AM
Subject: Fwd: From Cheri-ann when should I start
Attachments: From Cheri-ann when should I start

This is our OPS law clerk. When can she start. I would like to start her as soon as she can start. Please make contact with her to coordinate.

From: Charles Francis
To: Monk, Tonya
Date: 9/9/2009 1:28 PM
Subject: Fwd: FW: Registration Now Open for Tenants' Rights in ForeclosuresCourse
10/2/09
Attachments: FW: Registration Now Open for Tenants' Rights in ForeclosuresCourse 10/2/09

make sure our senior judges get this.

From: Charles Francis
To: Menendez, Jr., Manuel
Date: 1/21/2010 3:22 PM
Subject: Fwd: Guidance on AOSC09-54 - Final Report and Recommendations on Residential Mortgage Foreclosure Cases
Attachments: Guidance on AOSC09-54 - Final Report and Recommendations on Residential Mortgage Foreclosure Cases

Thanks a lot Manny for seeking guidance on this! Who will your program manager be?

From: Charles Francis
To: Rett, Marilyn
Date: 10/25/2010 10:03 AM
Subject: Fwd: Nov. 15 JAC Conference Call
Attachments: Nov. 15 JAC Conference Call

FYI. I have already posted this on my calendar.

From: Charles Francis
To: Pelletier, Dennis
Date: 5/19/2010 4:04 PM
Subject: Fwd: OPS Class Assignment Information - Foreclosure Backlog
Attachments: OPS Class Assignment Information - Foreclosure Backlog

Keep this handi for the mortgage foreclosure program. I still might not pay this much so don't put it down as fixed. Also, I will need to see you tomorrow about the program. Just check with me when you get time in the morning.

From: Charles Francis
To: Rett, Marilyn
Date: 7/20/2010 2:21 PM
Subject: Fwd: RE: Bank of America v. Harris - 2010 CA 149 - Re: Setting Foreclosure Summary Judgment

Posted procedures apply to all judges in Leon. Procedures will be posted for Franklin, Gadsden, and Wakulla. There will be no change in procedures for Liberty and Jefferson.

>>> Marilyn Rett 7/19/2010 8:32 AM >>>

How should I answer this since you mentioned you might be making an exception for Franklin?

>>> "Nicholas Hussin, Law Offices of Daniel C. Consuegra" <hearings@consuegralaw.com>
7/16/2010 1:43 PM >>>

Are the new procedures regarding all MSJ hearings needing to be heard in person effective county wide or just for Judge Francis?

Best regards,

Nicholas Hussin, Legal Assistant
Law Offices of Daniel C. Consuegra
9204 King Palm Drive
Tampa, FL 33619
Tel: (813) 915-8660
Fax: (813) 915-0559

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From: Marilyn Rett [<mailto:RettM@leoncountyfl.gov>]
Sent: Friday, July 16, 2010 9:54 AM
To: Law Offices of Daniel C. Consuegra Nicholas Hussin
Subject: RE: Bank of America v. Harris - 2010 CA 149 - Re: Setting Foreclosure Summary Judgment

PURSUANT TO NEW PROCEDURES, ALL MSJ HEARINGS MUST BE IN PERSON. IF YOU NEED TO CHANGE THE DATE, PLEASE ADVISE.

Marilyn Rett
Judicial Assistant to Chief Judge Charles A. Francis
Leon County Courthouse
301 South Monroe Street, Room 365K
Tallahassee, FL 32301
850-577-4306

FAX - 850-922-0327
rettm@leoncountyfl.gov

>>> "Nicholas Hussin, Law Offices of Daniel C. Consuegra" <hearings@consuegralaw.com>
7/16/2010 8:35 AM >>>

This is a confirmation, sorry about the email delay we were having I.T. maintenance earlier this week.

Best regards,

Nicholas Hussin, Legal Assistant
Law Offices of Daniel C. Consuegra
9204 King Palm Drive
Tampa, FL 33619
Tel: (813) 915-8660
Fax: (813) 915-0559

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From: Marilyn Rett [<mailto:RettM@leoncountyfl.gov>]

Sent: Thursday, July 15, 2010 8:10 AM

To: Law Offices of Daniel C. Consuegra Nicholas Hussin

Subject: RE: Bank of America v. Harris - 2010 CA 149 - Re: Setting Foreclosure Summary Judgment

Yes, and is this a confirmation?

Marilyn Rett
Judicial Assistant to Chief Judge Charles A. Francis
Leon County Courthouse
301 South Monroe Street, Room 365K
Tallahassee, FL 32301
850-577-4306

FAX - 850-922-0327
rettm@leoncountyfl.gov

>>> "Nicholas Hussin, Law Offices of Daniel C. Consuegra" <hearings@consuegralaw.com>
7/14/2010 2:28 PM >>>

Sorry for the delay in response, would I still be able to schedule the two for the 22nd of September at 3:30 p.m.?

Best regards,

Nicholas Hussin, Legal Assistant
Law Offices of Daniel C. Consuegra
9204 King Palm Drive
Tampa, FL 33619
Tel: (813) 915-8660
Fax: (813) 915-0559

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From: Marilyn Rett [<mailto:RettM@leoncountyfl.gov>]
Sent: Tuesday, July 13, 2010 3:46 PM
To: Law Offices of Daniel C. Consuegra Nicholas Hussin
Subject: Bank of America v. Harris - 2010 CA 149 - Re: Setting Foreclosure Summary Judgment

A HEARING CAN ONLY BE CANCELED BY MOTION STATING THE REASON FOR CANCELLATION, FILED WITH THE CLERK, SUBMITTED WITH A PROPOSED ORDER.

You have requested a hearing on Motion for Summary Judgment. A proposed date and time is below. Counsel should coordinate this date with all parties, and contact this office to confirm the date and time by replying to this e-mail, by 7/13/10. Upon confirmation of the hearing date and

time, the original **NOTICE OF HEARING MUST BE FILED WITH THE CLERK OF COURT WITHIN 5 DAYS OF CONFIRMATION, WITH A COURTESY COPY TO FORECLOSURE CASE SCHEDULER, LEON COUNTY COURTHOUSE, 301 S. MONROE STREET, ROOM 301-B, TALLAHASSEE, FL 32301.** The hearing will be held before a Senior Judge to be assigned, at the Leon County Courthouse, 301 S. Monroe St., Room 301-B, Tallahassee, FL 32301. To appear telephonically, it must be stated in the notice of hearing and the party appearing telephonically will call the **Senior Judge's chambers at 850-577-8067** at the appointed time. If more than one person is appearing telephonically, a conference call must be coordinated and initiated before calling in for the hearing. If a Notice of Hearing is not filed with the court within 5 days, the hearing is taken off the calendar.

9/22/10 @ 3:30 pm

Thank you.

Marilyn Rett
Judicial Assistant to Chief Judge Charles A. Francis
Leon County Courthouse
301 South Monroe Street, Room 365K
Tallahassee, FL 32301
850-577-4306

FAX - 850-922-0327
rettm@leoncountyfl.gov

>>> "Nicholas Hussin, Law Offices of Daniel C. Consuegra" <hearings@consuegralaw.com>
7/13/2010 2:38 PM >>>

Good Morning,

I need to schedule two foreclosure Summary Judgment hearings for the following two cases.
Thank you.

CU Members Mortgage vs. McPhaul , Byron
2010-CA-000854

Bank of America vs. Harris, Veronica W.
2010-CA-000149

Best regards,

Nicholas Hussin, Legal Assistant
Law Offices of Daniel C. Consuegra

9204 King Palm Drive
Tampa, FL 33619
Tel: (813) 915-8660
Fax: (813) 915-0559

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From: Charles Francis
To: Perry, Belvin
Date: 8/20/2010 10:11 AM
Subject: Fwd: RE: Mortgage Foreclosure Data Reporting

Here is what we have been told. It clearly is not a pending minus disposed scenario, especially this inactive category which in many categories is bad case management or process.

>>> "P.J. Stockdale" <stockdap@flcourts.org> 8/20/2010 9:30 AM >>>

That pretty much covered it Susan, I would like to add a little clarification on one or two items

7. Although we should report all monthly activity by the 15th of the next month, since data information is included in the data reporting, it is okay if some of the information is not timely reported. The data will be counted once it is reported.

Actually, the reporting data is the 10th of every month and not the 15th. Please make every effort to report the correct status in a timely manner. You will be receiving monthly status reports on your progress in the initiative along with error reports and the like. The more timely and accurate your reports are the less backtracking you will have to do.

5. The filing and disposition date for reopenings needs to be reported; however, P J, said that only reopenings that would not be resolved in a few days do not need to be reported, such as motions canceling sales. This seems to conflict with the reporting instructions that state the reopening events are to be reported if a filing fee is paid and cite motions to reschedule sales as examples of what to report. I'll get clarification on this.

Updating the workbooks does require a bit of thought and planning. Ideally, we would like to capture every event and status change as it happens. However, we recognize that updating the workbook for every single reopen event would present an unreasonable labor burden on some circuits. Please record everything where possible. For example, Holmes has 54 cases in its list. It is not unreasonable to track each event for those 54 cases. On the other hand, Bay has 3,123 cases in its list. Updating every event may not be so reasonable.

That being said, what we are looking for in the monthly submissions is a timely and accurate summary of the state and status of each case in the initiative. As we discussed, the state of a case refers to who must take action on the case next in order to move the property to sale. For example, an open/reopened case is waiting court action before it can move to sale. However, once a judgment or decision is rendered, the court is done with it and the case is waiting for clerk action to move the property to sale. That is, the court system is no longer responsible for the property with respect to the initiative.

The status of the case applies only to open/reopened cases and reflects where the court is in the process of rendering a judgment/decision. If a case status is active, it means the court is taking action to move the case to disposition. When the court cannot take action because of some external cause, the case is moved to an inactive status which provides some reason for the inactivity. We selected the status categories so that they should change only infrequently during the life of a case.

However you choose to update these workbooks during the month, please ensure that each case reflects the correct state and status when you send it to us on the 10th of the month.

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

-----Original Message-----

From: Susan Wilson [<mailto:SusanW@leoncountyfl.gov>]

Sent: Thursday, August 19, 2010 4:19 PM

To: Judge Charles A. Francis

Cc: P.J. Stockdale; Cheri-Ann Granston; Ina Hawkins; Sonya Jiles; Justin Moore; Patricia Moayad; Matthew Strenth; Kelly Vance

Subject: Mortgage Foreclosure Data Reporting

Judge Francis,

I spoke with P J Stockdale with the OSCA regarding the data reporting for the mortgage foreclosure program. I've copied P J so that he can correct any mistakes I've made, and I'm copied the program staff since they had similar questions. A summary of our discussion follows.

1. The purpose of the workbook is to help explain why the program worked or didn't work, and to identify problems if program didn't work. The purpose is NOT to determine program performance. Program performance is determined by the SRS data.
2. The goal of the program is to reduce the backlog of pending as of June 30, 2010 and the backlog of cases that will be filed during FY 2010/2011 by 62%. Backlog IS NOT defined as pending. Backlog is the excessive number of cases filed that cannot be handled with existing resources. For example, using the Delphi case weights, if the resources indicate that a circuit could dispose 75 cases annually and 100 cases were filed, then the backlog is 25. Our goal is to dispose 62% or 2, 719 of the backlogged cases in addition to our other cases. I have a request in the OSCA to let me know the total number of cases that needs to be disposed during FY 2010/2011.
3. Only cases in the "initiative" need to be report, so that would vary by circuit. Given our program that would be all mortgage foreclosure cases.
4. All new cases need to be added to the workbooks, since we cannot tell which cases are "backlog" cases.
5. The filing and disposition date for reopenings needs to be reported; however, P J, said that only reopenings that would not be resolved in a few days do not need to be reported, such as motions canceling sales. This seems to conflict with the reporting instructions that state the reopening events are to be reported if a filing fee is paid and cite motions to reschedule sales as examples of what to report. I'll get clarification on this.
6. P J recommends that we leave all cases in the inactive status, and change the status as the cases are being reviewed. Inactive means that the case cannot go forward with the court. Of course all new cases added will be listed as active since there will be not event to make the cases inactive.

7. Although we should report all monthly activity by the 15th of the next month, since data information is included in the data reporting, it is okay if some of the information is not timely reported. The data will be counted once it is reported.

So, to sum up our future action:

1. The workbooks are now on a common drive. I will add the new case information and Sonya will add the disposition information from case managers. Case managers will also provide Sonya with case status (active, etc) information as they review the cases.

2. We still need to determine how we will:

- a. obtain filing and disposition information on reopened cases
- b. obtain disposition information on cases disposed by presiding judge
- c. once a case is initially reviewed by the case managers, how subsequent changes in case status will be determine.

3. We will be meeting with Sene Bauman and Debbie Kennedy (Leon Clerk personnel) to see if we can streamline procedures for getting the data.

Thank you,
Susan

From: Charles Francis
To: Slayden, Grant
Date: 1/14/2010 10:39 AM
Subject: Fwd: Re: Mortgage Foreclosure Data

Great info

>>> Grant Slayden 1/14/2010 8:35 AM >>>

Chief Judge Francis:

Some interesting statistics, specifically that pending mortgage foreclosure cases in Leon County increased from 1,601 in Jan 09 to 2,438 in Dec 09, an increase of 52.3%.

Grant

>>> Susan Wilson 13.1.10 6:44 PM >>>

Grant,

Yes, it does look like we are building a backlog. The information is attached (and also a hard copy in your chair). The filing and disposition data is from SRS, available only through Oct 2009. The clearance rate data is from OCCA's quarter data, with most recent quarter being Apr - Jun 2009. The pending data is available only for Leon County and obtained from the Clerk's Judicial Web.

Here are the highlights:

1. Circuit-wide dispositions are following the same trend as filings, and while static are increasing.
2. Clearance rates declined until recently, and are declining at a greater rate than all circuit civil cases combined.
3. Pending cases in Leon County are increasing from 1601 in Jan 2009 to 2438 in Dec 2009, an increase of 52.3% in just 11 months.

Please let me know if you need additional information.

Thank you,
Susan

>>> Grant Slayden 1/13/2010 2:45 PM >>>

Susan:

Can you run numbers on mortgage foreclosures for me? How many do we have? By county? Are we building a backlog? How many are coming in a month on average? Any other relevant data.

Thanks,
Grant

Trial Court Administrator
2d Judicial Circuit of Florida
Leon County Courthouse, Rm. 225L
301 South Monroe Street
Tallahassee, Florida 32301-1861
W: 850.577.4420
F: 850.487.7947

From: Cheri-Ann Granston
To: Francis, Charles
Date: 9/17/2010 9:43 AM
Subject: Fwd: RE: Sanctions imposed by 12th Circuit
Attachments: Document_7249878.tiff; Document_7366366.tiff; Document_7366369.tiff; Docume
nt_7408689.tiff

Good Morning Judge,

I received this email from the 12th circuit court. I thought you might find this interesting. It's regarding sanctions the court imposed against Smith, Hiatt, and Diaz for failing to comply with court procedures and requirements. The corresponding orders are attached. The last attachment is the Court's Order. The court imposed a \$49,000 fine against the firm and a \$7,000 daily fine for each day the firm does not file certain certified instruments.

>>> "Edward Wilson" <EWilson@jud12.flcourts.org> 9/8/2010 8:53 AM >>>

Ms. Granston,

The webmaster for the 12th Circuit's website passed your recent inquiry on to me for a response. We have had some problems in this area, too. In isolated cases some of our judges will sanction the plaintiff's counsel with the cost of the defending party's attorney's fees related to the missed hearing. If the defendant is pro se, the judge may inquire whether the defendant had to miss work to attend the hearing and whether he incurred any lost wages because of that. Lost wages have been awarded to pro se defendants.

We recently had in Manatee County a serious situation of systematic abuse of the scheduling system for hearings and chronic "no shows" by one law firm. The case is HSBC Bank USA v. De Freitas, et al., Case No. 2007 CA 7993. The judge issued an order to show cause and had the Broward County Sheriff serve the order and summons on several attorneys from the plaintiff's firm. After an evidentiary hearing she found them in contempt and ordered compensation to the defending parties and a coercive fine to get them to clean up their procedures. I will separately e-mail you documents from this case. Due to the nature of our imaging software, I'll need to send the documents to you one at a time.

I hope this helps.

Ed Wilson, Court Counsel
12th Judicial Circuit

From: Ron Snavely
Sent: Monday, August 23, 2010 9:53 AM
To: Edward Wilson
Cc: Kevin Billingsley; Michael Gostischa
Subject: FW: Sanctions imposed by 12th Circuit

FYI

Ron Snavely
Court Administration Technology Services
(CATS Department)
IT Technician
861-7860 (Office)

650-5836 (cell)

Pursuant to Florida Rules of Judicial Administration, Section 2.420 and Florida Law, Email is subject to Public Records Requests.

From:Cheri-Ann Granston [<mailto:GranstonC@leoncountyfl.gov>]
Sent: Monday, August 23, 2010 9:49 AM
To: Ron Snavelly
Subject: Sanctions imposed by 12th Circuit

Good Morning,

I am the foreclosure coordinator for the 2d Judicial Circuit. Our circuit is trying to fine tune our foreclosure program. Lately we've been having a problem with no shows, plaintiff's counsel has been failing to appear at their scheduled hearings particularly for the Motions for Summary Judgment. I was wondering what sorts of sanctions your circuit imposes when the plaintiff fails to appear at their scheduled hearing? Any information you could offer is greatly appreciated.

Thank you,

Cheri-ann Granston

Staff Attorney/Foreclosure Coordinator

Second Judicial Circuit of Florida

301 S. Monroe Street, Ste 301N

Tallahassee, FL 32301

850.577.441

From: Charles Francis
To: Rett, Marilyn
Date: 6/15/2010 9:33 AM
Subject: Fwd: Sorry forgot to attach
Attachments: Sorry forgot to attach

Here is the form

>>> John Cooper 6/15/2010 9:17 AM >>>

Francis

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN AND
FOR LEON COUNTY, FLORIDA.

RECEIVED

JUN 14 2008

CHARLES A. FRANCIS
CIRCUIT JUDGE

AURORA LOAN SERVICES, LLC,

Plaintiff,

vs

CASE NO. 2008.CA.397

VIRGINIA W. WILLIAMS,
a/k/a VIRGINIA WILLIAMS,
et al.,

Defendants.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

This cause came on for consideration on Plaintiff's Motion For Final Summary Judgment. The Court having considered the motion, the actions of Plaintiff's counsel, now and in part, finds as follows:

A. Plaintiff's counsel, the Law Offices of Marshall Watson, P.A., on April 23, 2008, filed its Notice of Telephonic Hearing on its Motion For Final Summary Judgment scheduled for June 12, 2008, at 10:30 am.

B. By letter dated June 6, 2008, Plaintiff's counsel forwarded proposed orders to Franklin County, Florida, which is located in Apalachicola, Florida, rather than the Leon County Courthouse in Tallahassee, Florida.

C. On June 12, 2008, at 10:30 am, plaintiff's counsel failed to appear in person or telephonically for the hearing scheduled at the firm's request. Plaintiff's counsel also noticed the hearing in the wrong county.

D. Earlier in the week Plaintiff's counsel, while appearing telephonically at another hearing scheduled by the law firm, failed to forward to the Court the documents necessary to support the motion for summary final judgment.

E. If the two examples listed above were isolated cases the Court would overlook the same. However, such is not the case. Plaintiff's counsel has established a pattern of setting hearings and then not appearing without cancelling said hearings or otherwise advising the Court. In a number of cases the Marshall Watson law firm has not noticed the other parties of said hearings.

F. The privilege to appear telephonically at hearings can be abused. Plaintiff's attorneys have more than abused said privilege.

G. When one looks at the clerical time involved in pulling files, and the Court's time in reviewing said files only to have Plaintiff's counsel fail to appear, it is apparent that such practice can no longer continue.

Accordingly, it is

ORDERED AND ADJUDGED as follows:

1. Plaintiff's Motion For Final Summary Judgment is Denied.
2. Plaintiff's counsel, the Law Offices of Marshall Watson, P.A., shall be required

to appear in person, not telephonically, for all future hearings with this Court.

DONE AND ORDERED in Chambers at Tallahassee, Leon County, Florida, this

13th day of June, 2008.



WILLIAM L. GARY
Circuit Judge

copies to:

MARSHALL C. WATSON
Law Offices of Marshall C. Watson
1800 North West 49th Street, Suite 120
Fort Lauderdale, FL 33309

VIRGINIA W. WILLIAMS
724 Millard Street
Tallahassee, FL 32301

From: Charles Francis
To: Fulford, Jackie
Date: 8/12/2009 3:19 PM
Subject: General Files
Attachments: Telephonic Rights.wpd; Affidavit Untimely & Filing with Clerk.wpd; 2008CA27
47.wpd; ProperParties.doc; FL_ST_S_673_3091.doc; Set Aside Default.wpd

From: Laura Rush <RushL@flcourts.org>
To: Trial Court Chief Judges <TrialCourtChiefJudges@flcourts.org>, "TrialCou...
Date: 1/21/2010 2:09 PM
Subject: Guidance on AOSC09-54 - Final Report and Recommendations on Residential Mortgage Foreclosure Cases
Attachments: Model Administrative Order.doc

Chief Judges and Court Administrators,

The following guidance is offered to assist with implementation of In Re: Final Report and Recommendations on Residential Mortgage Foreclosure Cases, AOSC09-54 (December 28, 2009). The Model Administrative Order appended to AOSC09-54 is attached in Word format.

1. Controlling Language

AOSC09-54 adopted the Model Administrative Order with minor changes. Apparent conflicts between AOSC09-54 and the Model Administrative Order should be resolved in favor of AOSC09-54, unless otherwise stated in the following guidance.

2. Application

The requirements of AOSC09-54 and the Model Administrative Order apply to all residential mortgage foreclosure actions filed against a homestead residence involving loans originating under the federal Truth-in-Lending Act, Regulation Z. The requirements therefore apply to cases involving commercial lenders, but not to cases involving private mortgage holders.

Upon the effective date of the circuit chief judge's administrative order, all newly filed mortgage foreclosure actions within these parameters must be referred to a managed mediation program, with stated exceptions. The Model Administrative Order authorizes a presiding judge to require homestead residential mortgage foreclosure actions filed prior to the effective date of the chief judge's administrative order to be referred to the managed mediation program. The presiding judge may also refer to the program actions involving residences that are not homestead properties and any other residential foreclosure action the presiding judge deems appropriate.

AOSC09-54 does not include a provision by which circuits may opt out of a managed mediation program. Existing circuit programs for residential mortgage foreclosure actions must be modified to comply with the uniform standards set forth in AOSC09-54 and the Model Administrative Order.

3. Effective Date

AOSC09-54 specifies no date by which circuit managed mediation programs must be in place. In light of the emergency nature of the foreclosure crisis, circuits may want to expedite implementation of a managed mediation program. Until the chief judge issues an administrative order implementing a managed mediation program, circuits may maintain the status quo with respect to existing programs or procedures used to resolve residential mortgage foreclosure cases.

4. Costs

Managed mediation programs will operate separate and apart from the state courts system. Program costs will be paid by plaintiffs. There will be no financial impact to the courts.

5. Managed Mediation Providers

Providers must be either a "non-profit entity or associated with a reputable organization of proven

competence, autonomous and independent of the judicial branch," as stated in the "Parameters for Managed Mediation" at Exhibit 13 to the Model Administrative Order.

Neither AOSC09-54 nor State Courts System Purchasing Directives require chief judges to select a managed mediation provider through a competitive solicitation process. Because no court funds will be expended to implement the managed mediation programs, use of a competitive solicitation is a best practice, but is not required.

6. Training Standards

The mediation training standards appended to the Model Administrative Order as Exhibit 12 were adopted in whole by the Court in AOSC09-54. The mediation training standards require completion of both online and live classroom training.

7. Web-Enabled Electronic Platform for Information Exchange

While recognizing that a web-enabled electronic platform for exchange of borrower and lender information is the optimal solution, the Court approved the use of a dedicated, secure e-mail address by managed mediation providers as an interim method of exchanging this information.

8. Reports Regarding Non-Compliance with Mediation Requirements

As an interim measure in lieu of an immediate rule change, AOSC09-54 authorizes a managed mediation provider to take roll at mediation and to report failure of a plaintiff's representative with authority to settle to appear at mediation. AOSC09-54 states that the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy is examining issues relating to appearance requirements at mediation, including the reporting of a party's non-compliance with such requirements.

9. Chief Judge Responsibilities

Chief Judges are responsible for the following matters under AOSC09-54:

- * Selection of a managed mediation provider
- * Issuance of an administrative order implementing a managed mediation program consistent with AOSC09-54 and the Model Administrative Order
- * Receipt of periodic reports as may be required by the chief judge concerning parties' compliance with program requirements and level of satisfaction with the program; statistical information, including number of cases referred to mediation and cases resulting in settlement or impasse; and program financial information



- 0202



Cir 0203

From: Paula Watkins
To: Judges & JA's; Moayad, Patricia; Monk, Tonya; Mortgage Foreclosure Pr...
CC: Davis, Danny
Date: 11/9/2010 11:09 AM
Subject: Important: Mortgage Foreclosure E-mails

Please see the e-mail below from Danny. Thank you!

The ACLU has made a public records request for information pertaining to the Mortgage Foreclosure program, specifically relating to any specialized foreclosure divisions or special foreclosure courts. To comply with this request in regards to emails, I am kindly requesting you create a folder in GroupWise named 'Mortgage Foreclosure' if you do not already have one. Then copy all emails you have sent or received that you believe is related to the 2nd Judicial Circuits Mortgage Foreclosure program into this new folder. I will come around sometime after November 16th to collect these emails. Grant and I will go through the emails to determine if they should be included in the public records request.

If you have any questions or need assistance w/ creating this folder and/or copying e-mails into the folder, please contact me at 577-4444.

Respectfully,
Danny

APPENDIX A

MODEL ADMINISTRATIVE ORDER

IN THE [number] JUDICIAL CIRCUIT OF FLORIDA

OFFICE OF THE CHIEF JUDGE

ADMINISTRATIVE ORDER NUMBER 2009 –[#]

**ADMINISTRATIVE ORDER FOR CASE MANAGEMENT OF
RESIDENTIAL FORECLOSURE CASES AND MANDATORY REFERRAL
OF MORTGAGE FORECLOSURE CASES INVOLVING HOMESTEAD
RESIDENCES TO MEDIATION**

Whereas, pursuant to Article V, section 2(d) of the Florida Constitution, and section 43.26, Florida Statutes, the chief judge of each judicial circuit is charged with the authority and power to do everything necessary to promote the prompt and efficient administration of justice, and rule 2.215(b)(3), Florida Rules of Judicial Administration, mandates the chief judge to “develop an administrative plan for the efficient and proper administration of all courts within the circuit;” and

Whereas, rule 2.545 of the Rules of Judicial Administration requires that the trial courts “...take charge of all cases at an early stage in the litigation and...control the progress of the case thereafter until the case is determined...”, which includes “...identifying cases subject to alternative dispute resolution processes;” and

Whereas, Chapter 44, Florida Statutes, and rules 1.700-1.750, Florida Rules of Civil Procedure, provide a framework for court-ordered mediation of civil actions, except those matters expressly excluded by rule 1.710(b), which does not exclude residential mortgage foreclosure actions; and

Whereas, residential mortgage foreclosure case filings have increased substantially in the [number] Judicial Circuit, and state and county budget constraints have limited the ability of the courts in the [number] Judicial Circuit to manage these cases in a timely manner; and

Whereas, high residential mortgage foreclosure rates are damaging the economies of the count[y][ies] in the [number] Judicial Circuit; and

Whereas, the Supreme Court of Florida has determined that mandatory mediation of homestead residential mortgage foreclosure actions prior to the matter being set for final hearing will facilitate the laudable goals of communication, facilitation, problem-solving between the parties with the emphasis on self-determination, the parties' needs and interests, procedural flexibility, full disclosure, fairness, and confidentiality. Referring these cases to mediation will also facilitate and provide a more efficient use of limited judicial and clerk resources in a court system that is already overburdened; and

Whereas, the *[name of Program Manager]* is an independent, nonpartisan, nonprofit organization that has demonstrable ability to assist the courts with managing the large number of residential mortgage foreclosure actions that recently have been filed in the *[number]* Judicial Circuit.

NOW, THEREFORE, IT IS ORDERED:

Definitions

As used in this Administrative Order, the following terms mean:

“RMFM Program” (Residential Mortgage Foreclosure Mediation Program) means the mediation program managed by *[name of Program Manager]* to implement and carry out the intent of this Administrative Order.

“The Program Manager” means *[name of Program Manager]*, qualified in accordance with parameters attached as Exhibit 13. Also referred to as the “Mediation Manager.”

“Plaintiff” means the individual or entity filing to obtain a mortgage foreclosure on residential property.

“Plaintiff’s representative” means the person who will appear at mediation who has full authority to settle without further consultation and resolve the foreclosure suit.

“Borrower” means an individual named as a party in the foreclosure action who is a primary obligor on the promissory note which is secured by the mortgage being foreclosed.

“Homestead residence” means a residential property for which a homestead real estate tax exemption was granted according to the certified rolls of the last assessment by the county property appraiser prior to the filing of the suit to foreclose the mortgage.

“Form A” means the certifications required herein in the format of Exhibit 1 attached.

“Plaintiff’s Disclosure for Mediation” means those documents requested by the borrower pursuant to paragraph 7 below.

“Borrower’s Financial Disclosure for Mediation” means those documents described in Exhibit 5 attached.

“Foreclosure counselor” means a counselor trained in advising persons of options available when facing a mortgage foreclosure, who has no criminal history of committing a felony or a crime of dishonesty, and who is certified by the United States Department of Housing and Urban Development (HUD) or National Foreclosure Mitigation Counseling Program (NFMC) as an agency experienced in mortgage delinquency and default resolution counseling.

“Communication equipment” means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other, provided that all conversation of the participants is audible to all persons present.

Scope

1. ***Residential Mortgage Foreclosures (Origination Subject to TILA)***. This Administrative Order shall apply to all residential mortgage foreclosure actions filed in the [number] Judicial Circuit in which the origination of the note and mortgage sued upon was subject to the provisions of the federal Truth in Lending Act, Regulation Z. However, compliance with this Administrative Order varies depending on whether the property secured by the mortgage is a homestead residence.

Upon the effective date of this Administrative Order, all newly filed mortgage foreclosure actions filed against a homestead residence shall be referred to the RMFM Program unless the plaintiff and borrower agree in writing otherwise or unless pre-suit mediation was conducted in accordance

to paragraph 23. The parties to the foreclosure action shall comply with the conditions and requirements imposed by this Administrative Order. In actions to foreclose a mortgage on a homestead residence, the plaintiff and borrower shall attend at least one mediation session, unless the plaintiff and borrower agree in writing not to participate in the RMFM Program or the Program Manager files a notice of borrower nonparticipation.

Upon the effective date of this Administrative Order, all newly filed residential mortgage foreclosure actions involving property that is not a homestead residence shall comply with the requirements of filing a Form A as required by paragraph 5 below and the requirements of paragraph 18 below (plaintiff's certification as to settlement authority).

At the discretion of the presiding judge, compliance with this Administrative Order may also be required for homestead residential mortgage foreclosure actions filed prior to the effective date of this Administrative Order, to residences which are not homestead residences, and any other residential foreclosure action the presiding judge deems appropriate. A party requesting that the case be sent to mediation with the RMFM Program at the discretion of the presiding judge shall make the request in format of Exhibit 3 attached.

2. ***Referral to Mediation.*** This Administrative Order constitutes a formal referral to mediation pursuant to the Florida Rules of Civil Procedure in actions involving a mortgage foreclosure of a homestead residence. The plaintiff and borrower are deemed to have stipulated to mediation by a mediator assigned by the Program Manager unless pursuant to rule 1.720(f), Florida Rules of Civil Procedure., the plaintiff and borrower file a written stipulation choosing not to participate in the RMFM Program. Referral to the RMFM Program is for administration and management of the mediation process and assignment of a Florida Supreme Court certified circuit civil mediator who has been trained in mediating residential mortgage foreclosure actions and who has agreed to be on the panel of available certified circuit civil mediators. Mediators used in the RMFM Program shall be trained in accordance with the standards stated in Exhibit 12 attached. Mediation through the RMFM Program shall be conducted in accordance with Florida Rules of Civil Procedure and Florida Rules for Certified and Court-Appointed Mediators.

3. ***Compliance Prior to Judgment.*** The parties must comply with this Administrative Order and the mediation process must be completed before the plaintiff applies for default judgment, a summary judgment hearing, or a final hearing in an action to foreclose a mortgage on a homestead residence unless a notice of nonparticipation is filed by the Program Manager.
4. ***Delivery of Notice of RMFM Program with Summons.*** After the effective date of this Administrative Order, in all actions to foreclose a mortgage on residential property the clerk of court shall attach to the summons to be served on each defendant a notice regarding managed mediation for homestead residences in the format of Exhibit 2 attached.

Procedure

5. ***Responsibilities of Plaintiff's Counsel; Form A.*** When suit is filed, counsel for the plaintiff must file a completed Form A with the clerk of court. If the property is a homestead residence, all certifications in Form A must be filled out completely. Within one business day after Form A is filed with the clerk of court, counsel for plaintiff shall also electronically transmit a copy of Form A to the Program Manager along with the case number of the action and contact information for all of the parties. The contact information must include at a minimum the last known mailing address and phone number for each party.

In Form A, plaintiff's counsel must affirmatively certify whether the origination of the note and mortgage sued upon was subject to the provisions of the federal Truth in Lending Act, Regulation Z. In Form A, plaintiff's counsel must also affirmatively certify whether the property is a homestead residence. Plaintiff's counsel is not permitted to respond to the certification with "unknown," "unsure," "not applicable," or similar nonresponsive statements.

If the property is a homestead residence and if the case is not exempted from participation in the RMFM Program because of pre-suit mediation conducted in accordance with paragraph 23 below, plaintiff's counsel shall further certify in Form A the identity of the plaintiff's representative who will appear at mediation. Plaintiff's counsel may designate more than one plaintiff's representative. At least one of the plaintiff's representatives designated in Form A must attend any mediation session scheduled pursuant to this Administrative Order. Form A may be amended to change the

designated plaintiff's representative, and the amended Form A must be filed with the court no later than five days prior to the mediation session. All amended Forms A must be electronically transmitted to the Program Manager via a secure dedicated e-mail address or on the web-enabled information platform described in paragraph 8 no later than one business day after being filed with the clerk of court.

6. ***Responsibilities of Borrower.*** Upon the Program Manager receiving a copy of Form A, the Program Manager shall begin efforts to contact the borrower to explain the RMFM Program to the borrower and the requirements that the borrower must comply with to obtain a mediation. The Program Manager shall also ascertain whether the borrower wants to participate in the RMFM Program.

The borrower must do the following prior to mediation being scheduled: meet with an approved mortgage foreclosure counselor, and provide to the Program Manager the information required by the Borrower's Financial Disclosure for Mediation. The Borrower's Financial Disclosure for Mediation will depend on what option the borrower wants to pursue in trying to settle the action.

It shall be the responsibility of the Program Manager to transmit the Borrower's Financial Disclosure for Mediation via a secure dedicated e-mail address or to upload same to the web-enabled information platform described in paragraph 8; however, the Program Manager is not responsible or liable for the accuracy of the borrower's financial information.

7. ***Plaintiff's Disclosure for Mediation.*** Within the time limit stated below, prior to attending mediation the borrower may request any of the following information and documents from the plaintiff:

Documentary evidence the plaintiff is the owner and holder in due course of the note and mortgage sued upon.

A history showing the application of all payments by the borrower during the life of the loan.

A statement of the plaintiff's position on the present net value of the mortgage loan.

The most current appraisal of the property available to the plaintiff.

The borrower must deliver a written request for such information to the Program Manager in the format of Exhibit 6 attached no later than 25 days prior to the mediation session. The Program Manager shall promptly electronically transmit the request for information to plaintiff's counsel.

Plaintiff's counsel is responsible for ensuring that the Plaintiff's Disclosure for Mediation is electronically transmitted via a secure dedicated e-mail address or to the web-enabled information platform described in paragraph 8 below no later than five (5) business days before the mediation session. The Program Manager shall immediately deliver a copy of Plaintiff's Disclosure for Mediation to the borrower.

8. ***Information to Be Provided on Web-Enabled Information Platform.*** All information to be provided to the Program Manager to advance the mediation process, such as Form A, Borrower's Financial Disclosure for Mediation, Plaintiff's Disclosure for Mediation, as well as the case number of the action and contact information for the parties, shall be submitted via a secure dedicated e-mail address or in a web-enabled information platform with XML data elements.
9. ***Nonparticipation by Borrower.*** If the borrower does not want participate in the RMFM Program, or if the borrower fails or refuses to cooperate with the Program Manager, or if the Program Manager is unable to contact the borrower, the Program Manager shall file a notice of nonparticipation in the format of Exhibit 4 attached. The notice of nonparticipation shall be filed no later than 120 days after the initial copy of Form A is filed with the court. A copy of the notice of nonparticipation shall be served on the parties by the Program Manager.
10. ***Referral to Foreclosure Counseling.*** The Program Manager shall be responsible for referring the borrower to a foreclosure counselor prior to scheduling mediation. Selection from a list of foreclosure counselors certified by the United States Department of Housing and Urban Development shall be by rotation or by such other procedures as may be adopted by administrative order of the chief judge in the circuit in which the action is pending. The borrower's failure to participate in foreclosure counseling shall be cause for terminating the case from the RMFM Program.

11. Referrals for Legal Representation. In actions referred to the RMFM Program, the Program Manager shall advise any borrower who is not represented by an attorney that the borrower has a right to consult with an attorney at any time during the mediation process and the right to bring an attorney to the mediation session. The Program Manager shall also advise the borrower that the borrower may apply for a volunteer *pro bono* attorney in programs run by lawyer referral, legal services, and legal aid programs as may exist within the circuit. If the borrower applies to one of those agencies and is coupled with a legal services attorney or a volunteer *pro bono* attorney, the attorney shall file a notice of appearance with the clerk of the court and provide a copy to the attorney for the plaintiff and the Program Manager. The appearance may be limited to representation only to assist the borrower with mediation but, if a borrower secures the services of an attorney, counsel of record must attend the mediation.

12. Scheduling Mediation. The plaintiff's representative, plaintiff's counsel, and the borrower are all required to comply with the time limitations imposed by this Administrative Order and attend a mediation session as scheduled by the Program Manager. No earlier than 60 days and no later than 120 days after suit is filed, the Program Manager shall schedule a mediation session. The mediation session shall be scheduled for a date and time convenient to the plaintiff's representative, the borrower, and counsel for the plaintiff and the borrower, using a mediator from the panel of Florida Supreme Court certified circuit civil mediators who have been specially trained to mediate residential mortgage foreclosure disputes. Mediation sessions will be held at a suitable location(s) within the circuit obtained by the Program Manager for mediation. Mediation shall be completed within the time requirements established by rule 1.710(a), Florida Rules of Civil Procedure.

Mediation shall not be scheduled until the borrower has had an opportunity to meet with an approved foreclosure counselor. Mediation shall not be scheduled earlier than 30 days after the Borrower's Financial Disclosure for Mediation has been transmitted to the plaintiff via a secure dedicated e-mail address or uploaded to the web-enabled information platform described in paragraph 8.

Once the date, time, and place of the mediation session have been scheduled by the Program Manager, the Program Manager shall promptly file with the clerk of court and serve on all parties a notice of the mediation session.

13. ***Attendance at Mediation.*** The following persons are required to be physically present at the mediation session: a plaintiff's representative designated in the most recently filed Form A; plaintiff's counsel; the borrower; and the borrower's counsel of record, if any. However, the plaintiff's representative may appear at mediation through the use of communication equipment, if plaintiff files and serves at least five (5) days prior to the mediation a notice in the format of Exhibit 7 attached advising that the plaintiff's representative will be attending through the use of communication equipment and designating the person who has full authority to sign any settlement agreement reached. Plaintiff's counsel may be designated as the person with full authority to sign the settlement agreement.

At the time that the mediation is scheduled to physically commence, the Program Manager shall enter the mediation room prior to the commencement of the mediation conference and, prior to any discussion of the case in the presence of the mediator, take a written roll. That written roll will consist of a determination of the presence of the borrower; the borrower's counsel of record, if any; the plaintiff's lawyer; and the plaintiff's representative with full authority to settle. If the Program Manager determines that anyone is not present, that party shall be reported by the Program Manager as a non-appearance by that party on the written roll. If the Program Manager determines that the plaintiff's representative present does not have full authority to settle, the Program Manager shall report that the plaintiff's representative did not appear on the written roll as a representative with full settlement authority as required by this Administrative Order. The written roll and communication of authority to the Program Manager is not a mediation communication.

The authorization by this Administrative Order for the plaintiff's representative to appear through the use of communication equipment is pursuant to rule 1.720(b), Florida Rules of Civil Procedure (court order may alter physical appearance requirement), and in recognition of the emergency situation created by the massive number of residential foreclosure cases being filed in this circuit and the impracticality of requiring physical attendance of a plaintiff's representative at every mediation. Additional reasons for authorizing appearance through the use of communication equipment for mortgage foreclosure mediation include a number of protective factors that do not exist in other civil cases, namely the administration of the program by a program manager, pre-mediation

counseling for the borrower, and required disclosure of information prior to mediation. The implementation of this Administrative Order shall not create any expectation that appearance through the use of communication equipment will be authorized in other civil cases.

If the plaintiff's representative attends mediation through the use of communication equipment, the person authorized by the plaintiff to sign a settlement agreement must be physically present at mediation. If the plaintiff's representative attends mediation through the use of communication equipment, the plaintiff's representative must remain on the communication equipment at all times during the entire mediation session. If the plaintiff's representative attends through the use of communication equipment, and if the mediation results in an impasse, within five (5) days after the mediation session, the plaintiff's representative shall file in the court file a certification in the format of Exhibit 8 attached as to whether the plaintiff's representative attended mediation. If the mediation results in an impasse after the appearance of the plaintiff's representative through the use of communication equipment, the failure to timely file the certification regarding attendance through the use of communication equipment shall be grounds to impose sanctions against the plaintiff, including requiring the physical appearance of the plaintiff's representative at a second mediation, taxation of the costs of a second mediation to the plaintiff, or dismissal of the action.

Junior lienholders may appear at mediation by a representative with full settlement authority. If a junior lienholder is a governmental entity comprised of an elected body, such junior lienholder may appear at mediation by a representative who has authority to recommend settlement to the governing body. Counsel for any junior lienholder may also attend the mediation.

The participants physically attending mediation may consult on the telephone during the mediation with other persons as long as such consultation does not violate the provisions of sections 44.401-406, Florida Statutes.

14. ***Failure to Appear at Mediation.*** If either the plaintiff's representative designated in the most recently filed Form A or the borrower fails to appear at a properly noticed mediation and the mediation does not occur, or when a mediation results in an impasse, the report of the mediator shall notify the

presiding judge regarding who appeared at mediation without making further comment as to the reasons for an impasse. If the borrower fails to appear, or if the mediation results in an impasse with all required parties present, and if the borrower has been lawfully served with a copy of the complaint, and if the time for filing a responsive pleading has passed, the matter may proceed to a final hearing, summary judgment, or default final judgment in accordance with the rules of civil procedure without any further requirement to attend mediation. If plaintiff's counsel or the plaintiff's representative fails to appear, the court may dismiss the action without prejudice, order plaintiff's counsel or the plaintiff's representative's to appear at mediation, or impose such other sanctions as the court deems appropriate including, but not limited to, attorney's fees and costs if the borrower is represented by an attorney. If the borrower or borrower's counsel of record fails to appear, the court may impose such other sanctions as the court deems appropriate, including, but not limited to, attorney's fees and costs.

15. ***Written Settlement Agreement; Mediation Report.*** If a partial or final agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. Pursuant to rule 1.730(b), Florida Rules of Civil Procedure, if a partial or full settlement agreement is reached, the mediator shall report the existence of the signed or transcribed agreement to the court without comment within 10 days after completion of the mediation. If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the court without comment or recommendation. In the case of an impasse, the report shall advise the court who attended the mediation, and a copy of Form A or any amended Form A shall be attached to the report for the court to determine if at least one of the plaintiff's representative named in Form A appeared for mediation. The mediator's report to the court shall be in the format of Exhibit 9 attached.

16. ***Mediation Communications.*** All mediation communications occurring as a result of this Administrative Order, including information provided to the Program Manager that is not filed with the court, shall be confidential and inadmissible in any subsequent legal proceeding pursuant to Chapter 44, Florida Statutes, the Florida Rules of Civil Procedure, and the Florida Rules for Certified and Court-Appointed Mediators, unless otherwise provided for by law.

17. ***Failure to Comply with Administrative Order.*** In all residential foreclosure actions, if a notice for trial, motion for default final judgment, or motion for summary judgment is filed with the clerk of court, no action will be taken by the court to set a final hearing or enter a summary or default final judgment until the requirements of this Administrative Order have been met. In cases involving a homestead residence, the presiding judge shall require that copies of either 1) the most recently filed Form A and the report of the mediator, or 2) the most recently filed Form A and the notice of borrower's nonparticipation be sent to the presiding judge by the plaintiff or plaintiff's counsel prior to setting a final hearing or delivered with the packet requesting a summary or default final judgment.

The failure of a party to fully comply with the provisions of this Administrative Order may result in the imposition of any sanctions available to the court, including dismissal of the cause of action without further notice.

18. ***Mediation Not Required If Residence Is Not Homestead.*** If the plaintiff certifies in Form A that the property is NOT a homestead residence when suit is filed, plaintiff's counsel must file and serve with the complaint a certification identifying the agent of plaintiff who has full authority to settle the case without further consultation. The certification shall be in the form of Exhibit 10 attached.

If the plaintiff certifies in Form A that the property is NOT a homestead residence, the matter may proceed to a final hearing, summary judgment, or default final judgment in accordance with the rules of civil procedure without any further requirement to attend mediation, unless otherwise ordered by the presiding judge.

RMFM Program Fees

19. ***RMFM Program Fees.*** The fee structure for the RMFM Program is based on the assumption that a successful mediation can be accomplished with one mediation session. Accordingly, pursuant to rule 1.720(g), Florida Rules of Civil Procedure, the reasonable program fees for the managed mediation, including foreclosure counseling, the mediator's fee, and administration of the managed mediation program, is a total of no more than \$750.00 payable as follows:

- 1) not more than \$400.00 paid by plaintiff at the time suit is filed for administrative fees of the RMFM Program, including outreach to the borrower and foreclosure counseling fees; and
- 2) not more than \$350.00 paid by plaintiff within 10 days after notice of the mediation conference is filed for the mediation fee component of the RMFM Program fees

If more than one mediation session is needed, the total program fee stated above will also cover a second mediation session. However, if an additional mediation session is needed after the second session, the plaintiff shall be responsible for the payment of the program fees for such additional mediation sessions, unless the parties agree otherwise. The program fees for the third and each subsequent mediation session shall be no more than \$350.00 per session.

All program fees shall be paid directly to the Program Manager. If the case is not resolved through the mediation process, the presiding judge may tax the program fees as a cost or apply it as a set off in the final judgment of foreclosure.

If the borrower cannot be located, chooses not to participate in the RMFM Program, or if the borrower does not make any contact with the foreclosure counselor, the plaintiff shall be entitled to a refund of the portion of the Program fees attributable to foreclosure counseling. If mediation is scheduled and the borrower announces an intention not to participate further in the RMFM Program prior to the mediation session, or if the case settles and the Program Manager has notice of the settlement at least five (5) days prior to the mediation session, the plaintiff shall be entitled to a refund of the Program fees allocated for the mediation session. If notice of settlement is not received by the Program Manager at least five (5) days prior to the scheduled mediation session, the plaintiff shall not be entitled to any refund of mediation fees.

The total fees include the mediator's fees and costs; the cost for the borrower to attend a foreclosure counseling session with an approved mortgage foreclosure counselor; and the cost to the Program Manager for administration of the managed mediation program which includes but is not limited to providing neutral meeting and caucus space, scheduling, telephone lines and instruments, infrastructure to support a web-enabled information

platform, a secure dedicated email address or other secure system for information transmittal, and other related expenses incurred in managing the foreclosure mediation program.

Program Manager to Monitor Compliance and Satisfaction

20. *Monitoring Compliance Concerning Certain Provisions of This Administrative Order, Satisfaction with RMFM Program, and Program Operation.* The Program Manager shall be responsible for monitoring whether Form A has been filed in all residential foreclosure actions that commence after the effective date of this Administrative Order and whether the RMFM Program fees have been paid if the residence is a homestead residence. The Program Manager shall send compliance reports to the chief judge or the chief judge's designee in the format and with the frequency required by the chief judge.

The Program Manager may assist with enforcing compliance with this Administrative Order upon filing a written motion pursuant to rule 1.100(b), Florida Rules of Civil Procedure, stating with particularity the grounds therefor and the relief or order sought. Example orders are attached as Exhibit 11.

The Program Manager shall also provide the chief judge with periodic reports as to whether plaintiffs and borrowers are satisfied with the RMFM Program.

The Program Manager shall also provide the chief judge with reports with statistical information about the status of cases in the RMFM Program and RMFM Program finances in the format and with the frequency required by the chief judge.

21. *Designation of Plaintiff Liaisons with RMFM Program.* Any plaintiff who has filed five (5) or more foreclosure actions in the [number] Judicial Circuit while this Administrative Order is in effect shall appoint two RMFM Program liaisons, one of whom shall be a lawyer and the other a representative of the entity servicing the plaintiff's mortgages, if any, and, if none, a representative of the plaintiff. Plaintiff's counsel shall provide written notice of the name, phone number (including extension), email, and mailing address of both liaisons to the chief judge and the Program Manager within 30 days after the effective date of this Administrative Order, and on

the first Monday of each February thereafter while this Administrative Order is in effect.

The liaisons shall be informed of the requirements of this Administrative Order and shall be capable of answering questions concerning the administrative status of pending cases and the party's internal procedures relating to the processing of foreclosure cases, and be readily accessible to discuss administrative and logistical issues affecting the progress of the plaintiff's cases through the RMFM Program. Plaintiff's counsel shall promptly inform the chief judge and Program Manager of any changes in designation of the liaisons and the contact information of the liaisons. The liaisons shall act as the court's point of contact in the event the plaintiff fails to comply with this Administrative Order on multiple occasions and there is a need to communicate with the plaintiff concerning administrative matters of mutual interest.

List of Participating Mediators and Rotation of Mediators

22. ***List of Participating Mediators and Rotation of Mediators.*** The Program Manager shall post on its website the list of Florida Supreme Court certified mediators it will use to implement the RMFM Program and will state in writing the criteria, subject to approval by the chief judge, the program will use in selecting mediators. The Program Manager shall also state in writing the procedure, subject to the approval by the chief judge, the program will use to rotate the appointment of mediators. The RMFM Program shall encourage the use of mediators who have been trained to mediate mortgage foreclosure cases, reflecting the diversity of the community in which it operates. Assignment of mediators shall be on a rotation basis that fairly spreads work throughout the pool of mediators working in the RMFM Program, unless the parties mutually agree on a specific mediator or the case requires a particular skill on the part of the mediator.

Pre-Suit Mediation Encouraged

22. ***Pre-Suit Mediation.*** Mortgage lenders, whether private individuals, commercial institutions, or mortgage servicing companies, are encouraged to use any form of alternative dispute resolution, including mediation, ***before*** filing a mortgage foreclosure lawsuit with the clerk of the court. Lenders are encouraged to enter into the mediation process with their borrowers ***prior*** to filing foreclosure actions in the [number] Judicial Circuit to reduce the costs

to the parties for maintaining the litigation and to reduce to the greatest extent possible the stress on the limited resources of the courts caused by the large numbers of such actions being filed across the state and, in particular, in the *[number]* Judicial Circuit.

If the parties participated in pre-suit mediation using the RMFM Program or participated in any other pre-suit mediation program having procedures substantially complying with the requirements of this Administrative Order, including provisions authorizing the exchange of information, foreclosure counseling, and requiring use of Florida Supreme Court certified circuit civil mediators specially trained to mediate residential mortgage foreclosure actions, the plaintiff shall so certify in Form A, in which case the plaintiff and borrower shall not be required to participate in mediation again unless ordered to do so by the presiding judge. A borrower may file a motion contesting whether pre-suit mediation occurred in substantial compliance with the RMFM Program.

Nothing in this paragraph precludes the presiding judge from sending the case to mediation after suit is filed, even if pre-suit mediation resulted in an impasse or there was a breach of the pre-suit mediation agreement.

This Administrative Order shall be recorded by the clerk of the court in each county of the *[number]* Judicial Circuit, takes effect on *[effective date]*, and will remain in full force and effect unless and until otherwise ordered.

ORDERED on _____, 20[___].

[NAME OF CHIEF JUDGE], Chief Judge
[number] Judicial Circuit, State of Florida

RMFM PROGRAM TIMELINES

TIMELINE FROM DATE SUIT FILED:

Suit is filed

Form A filed with Complaint
RMFM Program fees paid by Plaintiff
Notice of RMFM Program attached to Summons

1 business day after suit is filed

Form A electronically transmitted to Program Manager by Plaintiff's counsel

60-120 days after suit is filed

Borrower meets with foreclosure counselor
Borrower's Financial Disclosure for Mediation is transmitted to IT platform
Mediation session is scheduled
Borrower requests Plaintiff's Disclosure for Mediation, if desired

120 days after suit is filed

Notice of Nonparticipation filed by Program Manager, if applicable

TIMELINE WITH MEDIATION SESSION AS POINT OF REFERENCE

Prior to mediation being scheduled

RMFM Program fees paid by Plaintiff
Borrower must contact Program Manager
Borrower must meet with foreclosure counselor
Borrower must complete and submit Borrower's Financial Disclosure for Mediation packet to Program Manager

30 days prior to mediation session

Program Manager electronically transmits Borrower's Financial Disclosure for Mediation to the IT platform

25 days prior to mediation session

Borrower makes written request for Plaintiff's Disclosure for Mediation if desired

5 days prior to mediation session

Any amended Form A designation of the plaintiff's representative must be filed with the Clerk

3 business days prior to mediation session

Plaintiff's counsel transmits Plaintiff's Financial Disclosure for Mediation to the IT platform

1 day prior to mediation session

Any amended Form A designation of the plaintiff's representative must be uploaded to the IT platform

10 days after mediation session

Program Manager/Mediator files mediator's report with the clerk of court and serves copies on the parties

INDEX OF EXHIBITS

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2. NOTICE OF RMFM PROGRAM TO BE SERVED WITH SUMMONS
3. BORROWER'S REQUEST TO PARTICIPATE IN RMFM PROGRAM
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5. BORROWER'S FINANCIAL DISCLOSURE FOR MEDIATION
6. BORROWER'S REQUEST FOR PLAINTIFF'S DISCLOSURE FOR MEDIATION
7. PLAINTIFF'S NOTICE OF ATTENDING MEDIATION BY TELEPHONE
8. PLAINTIFF'S CERTIFICATION REGARDING ATTENDING MEDIATION BY TELEPHONE
9. MEDIATOR'S REPORT
10. CERTIFICATION REGARDING SETTLEMENT AUTHORITY (Residence Not Homestead)
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EXHIBIT 1

FORM A

Please complete online at http://www.*** and file original with the Clerk of Court
IN THE CIRCUIT COURT IN AND FOR _____ COUNTY, FLORIDA

[Name of Plaintiff]

Case No.:

Plaintiff,

vs.

[Names of Defendant(s)]

Defendant(s)

Form "A"

(Certifications Pursuant to [number] Judicial Circuit Administrative Order 200[___])

Certificate of Plaintiff's Counsel Regarding Origination of Note and Mortgage

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court, certifies the origination of the note and mortgage sued upon in this action ___ WAS or ___ WAS NOT subject to the provisions of the federal Truth in Lending Act, Regulation Z.

Certificate of Plaintiff's Counsel Regarding Status of Residential Property

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court, certifies the property that is the subject matter of this lawsuit ___ IS or ___ IS NOT a homestead residence. A "homestead residence" means a residential property for which a homestead real estate tax exemption was granted according to the certified rolls of the last assessment by the county property appraiser prior to the filing of the suit to foreclose the mortgage.

If the residential property is a homestead residence, complete both of the following:

Certificate of Plaintiff's Counsel Regarding Pre-Suit Mediation

The following certification ___ DOES or ___ DOES NOT apply to this case:

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court, certifies that prior to filing suit a plaintiff's representative with full settlement authority attended and participated in mediation with the borrower, conducted by [Name of Program Manager], and the mediation resulted in an impasse or a pre-suit settlement agreement was reached but the settlement agreement has been breached. The undersigned further certifies that prior to mediation the borrower received services from a HUD or NFMC approved foreclosure counselor, Borrower's Financial Disclosure for Mediation was provided, and Plaintiff's Disclosure for Mediation was provided.

Certificate of Plaintiff's Counsel Regarding Plaintiff's Representative at Mediation

THE UNDERSIGNED, as counsel of record for plaintiff and as an officer of the court, certifies the following is a list of the persons, one of whom will represent the plaintiff in mediation with full authority to modify the existing loan and mortgage and to settle the foreclosure case, and with authority to sign a settlement agreement on behalf of the plaintiff (*list name, address, phone number, facsimile number, and email address*):

Plaintiff's counsel understands the mediator or the RMFM Program Manager may report to the court who appears at mediation and, if at least one of plaintiff's representatives named above does not appear at mediation, sanctions may be imposed by the court for failure to appear.

As required by the Administrative Order, plaintiff's counsel will transmit electronically to the RMFM Program Manager the case number of this action, the contact information regarding the parties, and a copy of this Form A, using the approved web-enable information platform.

Date:

(Signature of Plaintiff's Counsel)
[Printed name, address, phone number and
Fla. Bar No.]

EXHIBIT 2

NOTICE OF RMFM PROGRAM TO BE SERVED WITH SUMMONS

IN THE CIRCUIT COURT FOR THE [NUMBER] JUDICIAL CIRCUIT
IN AND FOR [COUNTY], FLORIDA

**A NOTICE FROM THE COURT REGARDING LAWSUITS TO FORECLOSE
MORTGAGES ON HOMES**

If you are being sued to foreclose the mortgage on your primary home and your home has a homestead exemption and if you are the person who borrowed the money for the mortgage, you have a right to go to “mediation.” At “mediation,” you will meet with a Florida Supreme Court certified mediator appointed by the court and also a representative of the company asking to foreclose your mortgage to see if you and the company suing you can work out an agreement to stop the foreclosure. **The mediator will not be allowed to give you legal advice or to give you an opinion about the lawsuit.** The mediator’s job is to remain neutral and not take sides, but to give both sides a chance to talk to each other to see if an agreement can be reached to stop the foreclosure. If you and the company suing you come to an agreement, a settlement agreement will be written up and signed by you and the company suing you. With some limited exceptions, what each side says at the mediation is confidential and the judge will not know what was said at mediation.

You will not have to pay anything to participate in this mediation program. To participate in mediation, **as soon as practical**, you must contact *[name of the Program Manager]* by calling *[phone number]* between 9:00 a.m. and 5:00 p.m., Monday through Friday.

To participate in mediation, you must also provide financial information to the mediator and meet with an approved foreclosure counselor prior to mediation. You will not be charged any additional amount for meeting with a foreclosure counselor. You may also request certain information from the company suing you before going to mediation.

[Name of the Program Manager] will explain more about the mediation program to you when you call.

If you have attended mediation arranged by *[name of the Program Manager]* prior to being served with this lawsuit, and if mediation did not result in a settlement, you may file a motion asking the court to send the case to mediation again if your financial circumstances have changed since the first mediation.

AS STATED IN THE SUMMONS SERVED ON YOU, YOU OR YOUR LAWYER MUST FILE WITH THE COURT A WRITTEN RESPONSE TO THE COMPLAINT TO FORECLOSE THE MORTGAGE WITHIN 20 DAYS AFTER YOU WERE SERVED. YOU OR YOUR LAWYER MUST ALSO SEND A COPY OF YOUR WRITTEN RESPONSE TO THE PLAINTIFF’S ATTORNEY. YOU MUST TIMELY FILE A WRITTEN RESPONSE TO THE COMPLAINT EVEN IF YOU DECIDE TO PARTICIPATE IN MEDIATION.

[Signature of Chief Judge]
CHIEF JUDGE, *[number]* Judicial Circuit

EXHIBIT 3

BORROWER'S REQUEST TO PARTICIPATE IN RMFM PROGRAM

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

Case No(s).:

Plaintiff(s),

vs.

Defendant(s).

BORROWER'S REQUEST TO PARTICIPATE IN RMFM PROGRAM

_____, (*printed name*), as the borrower on the mortgage sued upon in this case, hereby requests that this case be referred by the court to mediation using the RMFM Program. The undersigned states, under penalty of perjury, that he or she is currently living on the property as a primary residence and the property has a homestead tax exemption.

Signed on _____, 20____.

(*Signature*)

(*Printed Name*)

[Certificate of Service on the parties]

EXHIBIT 4

NOTICE OF BORROWER'S NONPARTICIPATION

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

Case No(s).:

Plaintiff(s),

vs.

Defendant(s).

**NOTICE OF BORROWER NONPARTICIPATION
WITH RMFM PROGRAM**

[Name of Program Manager] hereby gives notice to the court that _____,
(Borrower) will not be participating in the RMFM Program because:

- Borrower has advised that [he/she] does not wish to participate in mediation for this case;
- Borrower has failed or refuses to meet with a foreclosure counselor;
- Borrower has failed or refuses to comply with the Borrower's Financial Disclosure for Mediation;
- The RMFM Program has been unable to contact Borrower.

Signed on _____, 20____.

[Name of Program Manager]

BY: _____
(Signature)

(Printed Name)

[Certificate of Service on the parties]

EXHIBIT 5

BORROWER'S FINANCIAL DISCLOSURE FOR MEDIATION

EXHIBIT 5A: LOAN MODIFICATION

EXHIBIT 5B: SHORT SALE

EXHIBIT 5C: DEED IN LIEU OF FORECLOSURE

EXHIBIT 5A

BORROWER'S FINANCIAL DISCLOSURE FOR MEDIATION (LOAN MODIFICATION)

FORECLOSURE MEDIATION FINANCIAL WORKSHEET

Case No.:

v.

Plaintiff's Name

First Defendant's Name

SECTION 1: PERSONAL INFORMATION

Borrower's Name		Co-Borrower's Name	
Social Security Number	Date of Birth (mm/dd/yyyy)	Social Security Number	Date of Birth (mm/dd/yyyy)
<input type="checkbox"/> Married	<input type="checkbox"/> Civil Union/ Domestic Partner	<input type="checkbox"/> Married	<input type="checkbox"/> Civil Union/ Domestic Partner
<input type="checkbox"/> Separated	<input type="checkbox"/> Unmarried (single, divorced, widowed)	<input type="checkbox"/> Separated	<input type="checkbox"/> Unmarried (single, divorced, widowed)
Dependents (Not listed by Co-Borrower)		Dependents (Not listed by Borrower)	
Present Address (Street, City, State, Zip)		Present Address (Street, City, State, Zip)	

SECTION 2: EMPLOYMENT INFORMATION

Employer	<input type="checkbox"/> Self Employed	Employer	<input type="checkbox"/> Self Employed
Position/Title	Date of Employment	Position/Title	Date of Employment
Second Employer		Second Employer	
Position/Title	Date of Employment	Position/Title	Date of Employment
	Borrower	Co-Borrower	Total
Gross Salary/Wages			
Net Salary/Wages			
Unemployment Income			
Child Support/Alimony			
Disability Income			
Rental Income			
Other Income			
Total (do not include Gross income)			

SECTION 3: EXPENSE AND LIABILITIES

	Monthly Payments	Balance Due
First Mortgage		
Second Mortgage		
Other Liens/Rents		
Homeowners' Association Dues		
Hazard Insurance		
Real Estate Taxes		
Child Care		
Health Insurance		
Medical Charges		
Credit Card/Installment Loan		
Credit Card/Installment Loan		
Credit Card/Installment Loan		
Automobile Loan 1		
Automobile Loan 2		
Auto/Gasoline/Insurance		
Food/Spending Money		
Water/Sewer/Utilities		
Phone/Cell Phone		
Other		
Total		

SECTION 4: ASSETS

	Estimated Value
Personal Residence	
Real Property	
Personal Property	
Automobile 1	
Automobile 2	
Checking Accounts	
Saving Accounts	
IRA/401K/Keogh Accounts	
Stock/Bonds/CDs	
Cash Value of Life Insurance	
Other	
Total	

Reason for Delinquency/Inability to Satisfy Mortgage Obligation:

- | | | |
|--|---|---|
| <input type="checkbox"/> Reduction in income | <input type="checkbox"/> Medical issues | <input type="checkbox"/> Death of family member |
| <input type="checkbox"/> Poor budget management skills | <input type="checkbox"/> Increase in expenses | <input type="checkbox"/> Business venture failed |
| <input type="checkbox"/> Loss of Income | <input type="checkbox"/> Divorce/separation | <input type="checkbox"/> Increase in loan payment |
| <input type="checkbox"/> Other: _____ | | |

Fannie Mae Hardship Form 1021

Home Affordable Modification Program Hardship Affidavit

Borrower Name (first, middle, last): _____

Date of Birth: _____

Co-Borrower Name (first, middle, last): _____

Date of Birth: _____

Property Street Address: _____

Property City, State, Zip: _____

Servicer: _____

Loan Number: _____

In order to qualify for _____'s ("Servicer") offer to enter into an agreement to modify my loan, I/we am/are submitting this form to the Servicer and indicating by my/our checkmarks the one or more events that contribute to my/our difficulty making payments on my/our mortgage loan:

My income has been reduced or lost. For example: unemployment, underemployment, reduced job hours, reduced pay, or a decline in self-employed business earnings. I have provided details below under "Explanation."

Borrower: Yes ___ No ___ Co-Borrower: Yes ___ No ___

My household financial circumstances have changed. For example: death in family, serious or chronic illness, permanent or short-term disability, increased family responsibilities (adoption or birth of a child, taking care of elderly relatives or other family members). I have provided details below under "Explanation."

Borrower: Yes ___ No ___ Co-Borrower: Yes ___ No ___

My expenses have increased. For example: monthly mortgage payment has increased or will increase, high medical and health-care costs, uninsured losses (such as those due to fires or natural disasters), unexpectedly high utility bills, increased real property taxes. I have provided details below under "Explanation."

Borrower: Yes ___ No ___ Co-Borrower: Yes ___ No ___

My cash reserves are insufficient to maintain the payment on my mortgage load and cover basic living expenses at the same time. Cash reserves include assets such as cash, savings, money market funds, marketable stocks or bonds (excluding retirement accounts). Cash

reserves do not include assets that serve as an emergency fund (generally equal to three times my monthly debt payments). I have provided details below under "Explanation."

Borrower: Yes No Co-Borrower: Yes No

My monthly debt payments are excessive, and I am overextended with my creditors. I may have used credit cards, home equity loans or other credit to make my monthly mortgage payments. I have provided details below under "Explanation."

Borrower: Yes No Co-Borrower: Yes No

There are other reasons I/we cannot make our mortgage payments. I have provided details below under "Explanation."

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government in order to monitor compliance with federal statutes that prohibit discrimination in housing. You are not required to furnish this information, but are encouraged to do so. The law provides that a lender or servicer may not discriminate either on the basis of this information, or on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, the lender or servicer is required to note the information on the basis of visual observation or surname if you have made this request for a loan modification in person. If you do not wish to furnish the information, please check the box below.

BORROWER:

Ethnicity:

- Hispanic/Latino
- Not Hispanic/Latino

Race:

- American Indian/Alaska Native
- Asian
- Black/African American
- Native Hawaiian/Other Pacific Islander
- White

I do not wish to furnish this information

CO-BORROWER:

Ethnicity:

- Hispanic/Latino
- Not Hispanic/Latino

Race:

- American Indian/Alaska Native
- Asian
- Black/African American
- Native Hawaiian/Other Pacific Islander
- White

I do not wish to furnish this information

TO BE COMPLETED BY INTERVIEWER

Interviewer's Name (print or type): _____

Name/Address of Interviewer's Employer: _____

Face-to-face interview

Interviewer's Signature/Date _____/_____

Address _____

Telephone (include area code) _____

Internet address _____

BORROWER/CO-BORROWER ACKNOWLEDGEMENT

1. Under penalty of perjury, I/we certify that all of the information in this affidavit is truthful and the event(s) identified above has/have contributed to my/our need to modify the terms of my/our mortgage loan.
2. I/we understand and acknowledge the Servicer may investigate the accuracy of my/our statements, may require me/us to provide supporting documentation, and that knowingly submitting false information may violate Federal law.
3. I/we understand the Servicer will pull a current credit report on all borrowers obligated on the Note.
4. I/we understand that if I/we have intentionally defaulted on my/our existing mortgage, engaged in fraud or misrepresented any fact(s) in connection with this Hardship Affidavit, or if I/we do not provide all of the required documentation, the Servicer may cancel the Agreement and may pursue foreclosure on my/our home.
5. I/we certify that my/our property is owner-occupied and I/we have not received a condemnation notice.
6. I/we certify that I/we am/are willing to commit to credit counseling if it is determined that my/our financial hardship is related to excessive debt.
7. I/we certify that I/we am/are willing to provide all requested documents and respond to all Servicer communication in a timely manner. I/we understand that time is of the essence.
8. I/we understand that the Servicer will use this information to evaluate my/our eligibility for a loan modification or other workout, but the Servicer is not obligated to offer me/us assistance based solely on the representations in this affidavit.
9. I/we authorize and consent to Servicer disclosing to the U.S. Department of Treasury or other government agency, Fannie Mae and/or Freddie Mac any information provided by me/us or retained by Servicer in connection with the Home Affordable Modification Program.

Borrower Signature Date
E-mail Address: _____
Cell phone # _____
Home Phone # _____
Work Phone # _____
Social Security # _____ - _____ - _____

Co-Borrower Signature Date
E-mail Address: _____
Cell phone # _____
Home Phone # _____
Work Phone # _____
Social Security # _____ - _____ - _____

EXPLANATION:

(Provide any further explanation of the hardship making it difficult for you to pay on your mortgage.)

EXHIBIT 5B

BORROWER'S FINANCIAL DISCLOSURE FOR MEDIATION (SHORT SALE)

In addition to the FANNIE MAE HARDSHIP FORM 1021 in Exhibit 5A above, the following information must be uploaded into the web-enabled IT platform on behalf of the borrower:

Signed purchase contract for the homestead residence

Listing agreement for sale of the homestead residence

Preliminary HUD-1

Written permission from the borrower authorizing the plaintiff or any agent of the plaintiff to speak with the real estate agent about the borrower's loan

Borrowers should be reminded that the sale **MUST** be an arm's length transaction, and the property cannot be sold to anyone with close personal or business ties to the borrower.

EXHIBIT 5C

BORROWER'S FINANCIAL DISCLOSURE FOR MEDIATION (DEED IN LIEU OF FORECLOSURE)

In addition to the FANNIE MAE HARDSHIP FORM 1021 in Exhibit 5A above, the following information must be uploaded into the web-enabled IT platform on behalf of the borrower:

Current title search for the homestead residence

EXHIBIT 6

BORROWER'S REQUEST FOR PLAINTIFF'S DISCLOSURE FOR MEDIATION

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

Case No(s).:

Plaintiff(s),

vs.

Defendant(s).

**NOTICE OF BORROWER'S REQUEST FOR PLAINTIFF'S
DISCLOSURE FOR MEDIATION**

_____, (*printed name*), as the borrower on the mortgage
sued upon in this case, hereby requests the following information and disclosure
from the plaintiff pursuant to Administrative Order [*number*] entered in the
[*number*] Judicial Circuit (*mark the information and documents requested*):

___ Documentary evidence the plaintiff is the owner and holder in due
course of the note and mortgage sued upon.

___ A history showing the application of all payments by the borrower
during the life of the loan.

___ A statement of the plaintiff's position on the present net present value
of the mortgage loan.

___ The most current appraisal of the property available to the plaintiff.

Signed on _____, 20__.

(*Signature*)

[Certificate of Service on the parties]

EXHIBIT 7

PLAINTIFF'S NOTICE OF ATTENDING MEDIATION THROUGH THE USE OF COMMUNICATION EQUIPMENT

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

Case No(s).:

Plaintiff(s),

vs.

Defendant(s).

**NOTICE THAT PLAINTIFF'S REPRESENTATIVE WILL APPEAR
THROUGH THE USE OF COMMUNICATION EQUIPMENT AND
DESIGNATION OF AUTHORITY TO SIGN SETTLEMENT
AGREEMENT**

Plaintiff gives notice of exercising the option to allow plaintiff's representative designated in Form A filed in this case to attend mediation through the use of communication equipment, and designates *[name of person]* as the person who will be physically present at mediation with full authority on behalf of plaintiff to sign any settlement agreement reached at mediation.

On the date of the mediation, plaintiff's representative can be reached by calling the following telephone number: *[telephone number, including area code and extension]*.

Signed on _____, 20__.

[Name of Plaintiff]

(Signature)

(Printed Name)

[Certificate of Service by Plaintiff's Counsel]

A-45

EXHIBIT 8

PLAINTIFF'S CERTIFICATION REGARDING ATTENDANCE AT MEDIATION THROUGH THE USE OF COMMUNICATION EQUIPMENT

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

Case No(s).:

Plaintiff(s),

vs.

Defendant(s).

**CERTIFICATION REGARDING ATTENDANCE AT MEDIATION
THROUGH THE USE OF COMMUNICATION EQUIPMENT**

[Name], who was designated as Plaintiff's Representative in Form A filed herein, under penalty of perjury, states to the court that [he][she] (*mark as appropriate*)

- Attended mediation through the use of communication equipment, and was on the communication equipment at all times during the entire mediation.
- Attended mediation, through the use of communication equipment but was not on the communication equipment at all times during the mediation.

Signed on _____, 20____.

(Signature)

(Printed Name)

[Certificate of Service by Plaintiff's Counsel]

EXHIBIT 9

MEDIATION REPORT

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

Case No(s).:

Plaintiff(s),

vs.

Defendant(s).

MEDIATION REPORT
(RMFM Program)

Pursuant to the Court's Order, a Mediation Conference was conducted by
[name of mediator], Certified Circuit Civil Mediator, on *[date]*.

1. The following were present:

a) The Plaintiff's Representative, *[name]*, and Plaintiff's attorney,
[name].

b) The Defendant[s], *[name(s)]*, and his/her/their attorney[s],
[name(s)].

2. The result of the Mediation Conference is as follows (*Mediator selects only one*):

_____ A signed **SETTLEMENT AGREEMENT** was reached during
this Conference.

_____ The parties have reached a total **IMPASSE**.

_____ The parties have agreed to **ADJOURN** the mediation to *[date]*.

_____ Mediation has been **TERMINATED**.

As required by Administrative Order *[number]* a copy of the most recently
filed Form A is attached.

[Certificate of Service]

EXHIBIT 10

CERTIFICATION REGARDING SETTLEMENT AUTHORITY (RESIDENCE NOT HOMESTEAD)

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

Case No(s):

Plaintiff(s),

vs.

Defendant(s).

PLAINTIFF'S CERTIFICATION SETTLEMENT AUTHORITY
(Residence Is Not Homestead)

In compliance with Administrative Order *[number]*, the undersigned attorney certifies that following person or entity has full authority to negotiate a settlement of this case with the borrower without further consultation:

(All of the following information must be provided)

Name:

Mailing Address:

Telephone Number (including area code and extension):

Fax Number:

Email Address:

Loan/File Number:

Notice to Defendants: Because of privacy laws and rules, the plaintiff will only be able to negotiate a modification of the loan with the named borrower on the underlying debt.

I certify a copy of this certification was served on defendants with the summons.

Date:

[Signature, Address, Phone Number of Plaintiff's Counsel]

EXHIBIT 11

ORDERS FOR REFERRALS, COMPLIANCE, AND ENFORCEMENT

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

Case No(s).:

Plaintiff(s),

vs.

Defendant(s).

ORDER TO SHOW CAUSE

(Plaintiff's Failure to Comply with Administrative Order [number])

It appearing to the court that Plaintiff has failed to comply with the requirements of Administrative Order [number] in regards to the following (*as marked*):

Form A

- ___ Plaintiff failed to file Form A.
- ___ Plaintiff failed to electronically submit Form A to the Program Manager using the approved web-based information platform.

Payment of RMFM Program Fees

- ___ Plaintiff failed to pay the portion of the RMFM Program fees payable at the time suit is filed.
- ___ Plaintiff failed to pay the portion of the RMFM Program fees payable within 10 days after the notice conference is filed.

Electronic Transmittal of Case Number and Borrower Contact Information

- ___ Plaintiff failed to electronically submit the case number and contact

information to the borrower to the Program Manager using the approved web-based information platform.

Failure to File and Serve Certification Regarding Settlement Authority

___ Plaintiff failed to file and serve the certification regarding the person or entity with full settlement authority where the residence is not homestead (Form Exhibit 9 attached to the Administrative Order).

Attendance at Mediation

___ Plaintiff's counsel failed to attend mediation.

___ Plaintiff's representative designated in the most recent Form A filed in the court file failed to attend mediation.

___ Plaintiff's agent with full authority to sign a settlement agreement failed to attend mediation.

___ Plaintiff's representative failed to attend by telephone at all times during the mediation session.

___ After the mediation resulted in an impasse, plaintiff's representative failed to file the certification regarding attendance at mediation by telephone at all times (Form Exhibit 7 attached to the Administrative Order).

IT IS ORDERED that Plaintiff shall appear before the court at the *[designation of courthouse/courtroom]* on *[date]* at *[time]* to show cause why sanctions for noncompliance the Administrative Order *[number]* should not be imposed. Plaintiff is cautioned that failure to appear at the show cause hearing may result in the case being dismissed and the imposition of other appropriate sanctions.

Signed on *[date]*

[signature block for judge]

[Certificate of Service]

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

Case No(s):

Plaintiff(s),

vs.

Defendant(s).

ORDER AFTER SHOW CAUSE HEARING

(Plaintiff's Failure to Comply with Administrative Order *[number]*)

The court having determined that Plaintiff has failed to comply with the requirements of Administrative Order *[number]*, it is ORDERED and ADJUDGED (*as marked*):

Form A

___ Within 10 days from the date of this order, Plaintiff shall file and electronically submit Form A to the Program Manager using the approved web-based information platform.

Payment of RMFM Program Fees

___ Within 10 days from the date of this order, Plaintiff shall pay \$_____ of the RMFM Program fees to the Program Manager.

Electronic Transmittal of Case Number and Borrower Contact Information

___ Within 10 days from the date of this order, Plaintiff shall electronically submit the case number and contact information to the borrower to the Program Manager using the approved web-based information platform.

Failure to File and Serve Certification Regarding Settlement Authority

___ Within 10 days after the date of this order, Plaintiff shall file and serve the certification regarding the person or entity with full settlement authority where the residence is not homestead (Form Exhibit 9 attached to the Administrative Order).

Attendance at Mediation

___ Plaintiff’s counsel shall attend the next scheduled mediation in this case.

___ _____ (Name), as plaintiff’s representative designated in the most recent Form A filed in the court file, shall physically attend the next scheduled mediation in this case.

___ _____ (Name), as plaintiff’s agent with full authority to sign a settlement agreement shall attend the next scheduled mediation in this case.

Dismissal

___ This case is dismissed without prejudice.

Additional Sanctions

___ The court determines _____ is entitled to an award of attorney’s fees and cost, the amount of which shall be determined at a subsequent hearing.

Signed on [date]

[signature block for judge]

[Certificate of Service]

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

Case No(s).:

Plaintiff(s),

vs.

Defendant(s).

ORDER REFERRING CASE TO RMFM PROGRAM
(Case Filed Prior to *[effective date of Administrative Order]*)

It appearing to the court that the residence which is the subject of this action to foreclose a mortgage is a “homestead residence” to which Administrative Order *[number]* applies and that Defendant _____ (Borrower) has requested that the case be referred to mediation, it is ORDERED:

The case is referred to the RMFM Program for mediation, and the plaintiff and borrower shall comply with Administrative Order *[number]*. Within 10 days from the date of this order, the plaintiff shall pay that portion of the RMFM Program fees payable at the time suit is filed, file a properly filled out Form A in the manner required by the administrative order, and electronically transmit Form A to the Program Manager using the approved web-based information platform.

The plaintiff and borrower are to cooperate with the Program Manager and must attend any mediation scheduled by the Program Manager.

The plaintiff is advised and cautioned that failure to comply in a timely manner with the requirements of this order will result in dismissal of the cause of action without further order of the court.

Signed on *[date]*

[signature block for judge]

[Certificate of Service]

EXHIBIT 12

MEDIATION TRAINING STANDARDS

Residential Mortgage Foreclosure Training Standards

Introduction

Achieving an informed and committed workforce of Residential Mortgage Foreclosure Mediators requires not only a grasp of the obvious mediation skills, but an extension of those skills into practical and substantive knowledge areas including, but not limited to, mortgage loan products, securities, loan servicers, court processes, and resolution options. A training model which includes both a preliminary online modular dissemination of information followed by live classroom training will provide this knowledge. Participants' completion of online training modules prior to a one-day live class will facilitate better discussion and greater comprehension. Post training access to online practice resources can improve, develop statewide practice and provide real time content updates.

Development of this training model is not only feasible, but also can be developed in a timely way. We recommend that each training provider maintain a needs-based approach to training, reflect on and respond to the participants' needs, and clearly state a training rationale that will serve as a methodological and ethical touchstone. It is our hope that this outline for Residential Mortgage Foreclosure Mediation Training Objectives and Standards will lead to quality mortgage foreclosure mediation training and practice throughout the State of Florida.

1. Mortgage Foreclosure Mediation Training Goals

At the conclusion of the training, the participants shall be able to:

- Recognize Basic Legal Concepts in Mortgage Foreclosure Mediation
- Identify Negotiation Dynamics in Mortgage Foreclosure Mediation
- Identify Mediation Process and Techniques in Mortgage Foreclosure Mediation
- Recognize Financial Issues in Mortgage Foreclosure Mediation
- Identify Communication Skills in Mortgage Foreclosure Mediation
- Recognize Ethical Issues in Mortgage Foreclosure Mediation

2. Learning Objectives

- a. Basic Legal Concepts in Mortgage Foreclosure Mediation
 - 1) Recognize basic legal concepts in mortgage foreclosures.
 - 2) Explain the process of, and timelines in, mortgage foreclosure and in the mortgage foreclosure mediation process.
 - 3) Identify the state rules, state and federal statutes, servicing guidelines, and local procedures and forms governing mortgage foreclosure mediation.
 - 4) Identify the protections, constraints, and exceptions of the Florida Confidentiality and Privilege Act in the context of Mortgage Foreclosure Mediation.
- b. Negotiation Dynamics in Mortgage Foreclosure Mediation
 - 1) Recognize the issues of settlement authority as they relate to the stakeholders in Mortgage Foreclosure Mediation.
 - 2) Recognize the impact of physical, telephonic, videoconference, on line or other electronic means of appearance at the mediation conference on the negotiation.
 - 3) Recognize the role(s) of the following in the Mortgage Foreclosure Mediation process:
 - i. lender
 - ii. loan servicer
 - iii. investor
 - iv. mortgage broker
 - v. mortgage pool
 - vi. second mortgagee
 - vii. condominium association
 - viii. homeowners' association
 - ix. lien holders (i.e., municipal, mechanics lien)
 - x. MERS

- xi. appraiser
- 4) Recognize techniques for assessing risks and incentives in a mortgage foreclosure case.
- 5) Recognize concept of “good faith” and distinguish it from state court appearance requirements.
- 6) Recognize basic mortgage nomenclature and sources, types and structure of mortgages.
- 7) Identify options for resolution such as:
 - i. modification of mortgage terms
 - ii. partial loan forgiveness
 - iii. placement of delinquent payments at the end of the loan term
 - iv. short sale
 - v. deed in lieu of foreclosure
 - vi. waiver of deficiency judgment
 - vii. stipulation to modify (i.e., if mortgagor makes X number of payments, then the loan will be modified)
 - viii. principal set aside
 - ix. repayment plan
 - x. loan reinstatement
 - xi. “right to rent” (i.e., the bank owns the property and rents it to the former borrower at the market rental rate)

c. Mediation Process and Techniques in Mortgage Foreclosure Mediation

- 1) Identify procedural elements which should be addressed prior to the parties’ entry into the mediation room including telephonic and other electronic equipment.
- 2) Identify information which needs to be exchanged prior to mediation (i.e., Pooling and Servicing Agreement; life of loan history; mortgagee current financial disclosure; different loss mitigation, loan modification and other resolution options).

- 3) Identify issues which are appropriate for mortgage foreclosure mediation and those that are not appropriate.
 - 4) Identify individuals who are essential participants in mortgage foreclosure mediation as well as those who are entitled to be present and those who are not required to participate but whose participation may be helpful in mediation.
 - 5) Describe techniques for mediating when all parties are self-represented, some parties are self-represented, or all parties are presented by counsel.
 - 6) Identify appropriate techniques for handling a situation where a representative appearing for a party does not have full authority to settle.
 - 7) Discuss the dynamics of mediating when one or more parties, participants, or representatives frequently participate in mediation.
 - 8) Discuss how emotions affect mortgage foreclosure issues and a party's ability to effectively mediate.
 - 9) Identify the role and procedures of the Program Manager
- d. Financial Issues in Mortgage Foreclosure Mediation
- 1) Understand the Net Present Value Model of the Making Home Affordable Program.
 - 2) Understand debt-to-income ratios and guidelines and potentials for re-defaults.
 - 3) Identify Fannie Mae, Freddie Mac, FHA, VA, and other loan servicer and investor issues and options.
- e. Communication Skills in Mortgage Foreclosure Mediation
- 1) Identify appropriate questions to assist the parties see their own and the other party's issues.

- 2) Identify resources for foreign language interpreters and when and how to use them.

f. Ethical Issues in Mortgage Foreclosure Mediation

- 1) Recognize power imbalances and when a mediator shall advise the parties of the right to seek independent legal counsel.
- 2) Understand that a mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, direct a resolution of any issue or indicate how the court in which the case has been filed will resolve the dispute.
- 3) Memorializing the parties' agreement.

3. **Training Parameters**

a. Training Provider

- 1) Training may be provided by the Program Manager(s) OR by independent training providers.

b. Funding

- 1) Fees would be paid by mediators to training provider(s) and may include entire training process.

c. Structure

- 1) A series of self – study web based modules corresponding to the six categories of learning objectives outlined in these recommendations – each followed by an online quiz; completed at participant's own pace.
- 2) Final online test for pass code entry to live class.
- 3) Live classroom training

- i. Length of Training. An instructional hour is defined as 50 minutes.
 - ii. Span of Training. Live mortgage foreclosure mediation training shall be presented over a period of one (1) day.
- 4) Certificate of Completion of Advanced Course on Florida Residential Mortgage Foreclosure Mediation given to participant. Access to web-based modules terminates.
- 5) Optional Online Learning Forum - for continued learning provided by Program Manager(s) OR by independent training providers – additional monthly fee for access

4. **Recommended Course Content Requirements**

Required Training Materials. At a minimum, training providers shall provide each of their attendees with a training manual that includes:

- a. An agenda annotated with the learning objectives to be covered in each section and the intended method of instruction;
- b. Sample mortgage foreclosure mediated settlement agreements;
- c. Sample federal government forms, i.e. HAMP Program Hardship Affidavit, HAMP Trial Period Plan, HAMP FAQs, IRS Form 4506-T, Foreclosure Mediation Financial Worksheet;
- d. Suggested readings including:
 - i. Chapter 44, Florida Statutes – Mediation Alternatives to Judicial Action
 - ii. Florida Rules for Certified and Court-Appointed Mediators
 - iii. Rules 1.510 and 1.700 - 1.750, Florida Rules of Civil Procedure
 - iv. Chapter 697, Florida Statutes – Instruments Deemed Mortgages and the Nature of a Mortgage
 - v. Chapter 701, Florida Statutes – Assignment and Cancellation of Mortgages
 - vi. Chapter 702, Florida Statutes – Foreclosure of

- vii. Mortgages, Agreements for Deeds, and Statutory Liens
Chapter and/or sections pertaining to Condominiums and Homeowner Associations
- viii. Section 55.10(1), Florida Statutes (2004) pertaining to judgment liens
- ix. Federal statutes (i.e. Bankruptcy; Truth in Lending Act, Hope for Homeowners Act of 2008, Fair Debt Collection Practices Act, Service Members Civil Relief Act of 2003, and others to be identified and defined more specifically)
- x. Homeowner Affordability and Stability Plan, Home Affordable Modification Program (HAMP), and guidelines for servicers
- xi. Glossary of Terms
- xii. List of local, state and federal resources for borrowers
- xiii. Internet Links to useful on line resources
- xiv. Current Supreme Court of Florida Administrative Order, In Re Task Force on Residential Mortgage Foreclosure Cases
- xv. Local Judicial Circuit Administrative Order on Residential Mortgage Foreclosure Cases
- xvi. Additional reading resources provided by the Mediation Manager

5. **Training Methodology**

- a. Pedagogy. Residential mortgage foreclosure mediation training programs shall include, but are not limited to, the following: lecture, group discussion, and a mortgage foreclosure mediation demonstration.
 - 1) Use of subject matter specialists, i.e. lender, borrower, loan servicer, investor, plaintiff and defense counsel, mortgage foreclosure counselor, community resources.
 - 2) A subject matter specialist shall have a substantial part of his or her professional practice in the area about which the specialist is lecturing and shall have the ability to connect his or her area of expertise with the residential mortgage foreclosure mediation process.

- b. Residential Mortgage Foreclosure Mediation Demonstration. All mortgage foreclosure mediation training programs shall present a residential mortgage foreclosure role play mediation demonstration either live (including video conferencing) or by video/DVD presentation.
- c. Web-Based Methodologies. Web-based technologies may be used as an optional delivery method or as a post-training forum for continued learning and discussion for mediators. An online version of the training may provide a repository for the rapidly changing residential mortgage foreclosure training information.
- d. Assessment. Post-training assessment by participants, using post-training surveys combining a Likert scale with narrative response components, should inform content development and methodologies and provide quality assurance for training providers. The post-training survey would give the participants the opportunity to evaluate the effectiveness of the trainer(s), the substantive content of the program, and the practical value of the training, and to offer additional suggestions or comments.

EXHIBIT 13

PARAMETERS FOR MANAGED MEDIATION

PARAMETERS FOR PROVIDERS OF MANAGED MEDIATION SERVICES

Purpose: To define the parameters of managers directing mediation services for parties involved in residential mortgage foreclosure litigation.

A. Characteristics of Program Manager

1. Compliant with ADR principles as promulgated by the supreme court, and ADR statutes and rules;
2. Non-profit entity or associated with a reputable organization of proven competence, autonomous and independent of the judicial branch;
3. Capable of efficient administration of large case loads;
4. Sensitive to cultural, diversity, and Americans with Disabilities Act issues;
5. Politically and professionally neutral;
6. Knowledgeable of court procedures, current trends, laws, rules, and regulations affecting residential foreclosures;
7. Fiscally transparent and accountable;
8. Quickly adaptable to a dynamic and rapidly evolving legal environment;
9. Financially stable;
10. Capable of sustained operation without fiscal impact on the courts;
11. Capable of effectively implementing information technology systems and web-based programs;
12. Alert to ethical and confidentiality issues; and
13. Agreeable to acting as manager for voluntary pre-suit mediation.

B. Services to be Provided by Program Manager

1. Receive mediation referrals and, within designated time limits, schedule and coordinate mediation conferences: date, place and time; reserve and provide venues for mediation and caucus; manage continuances and re-scheduling;
2. Maintain financial books and records to insure transparency and accuracy of receipts and expenditures;

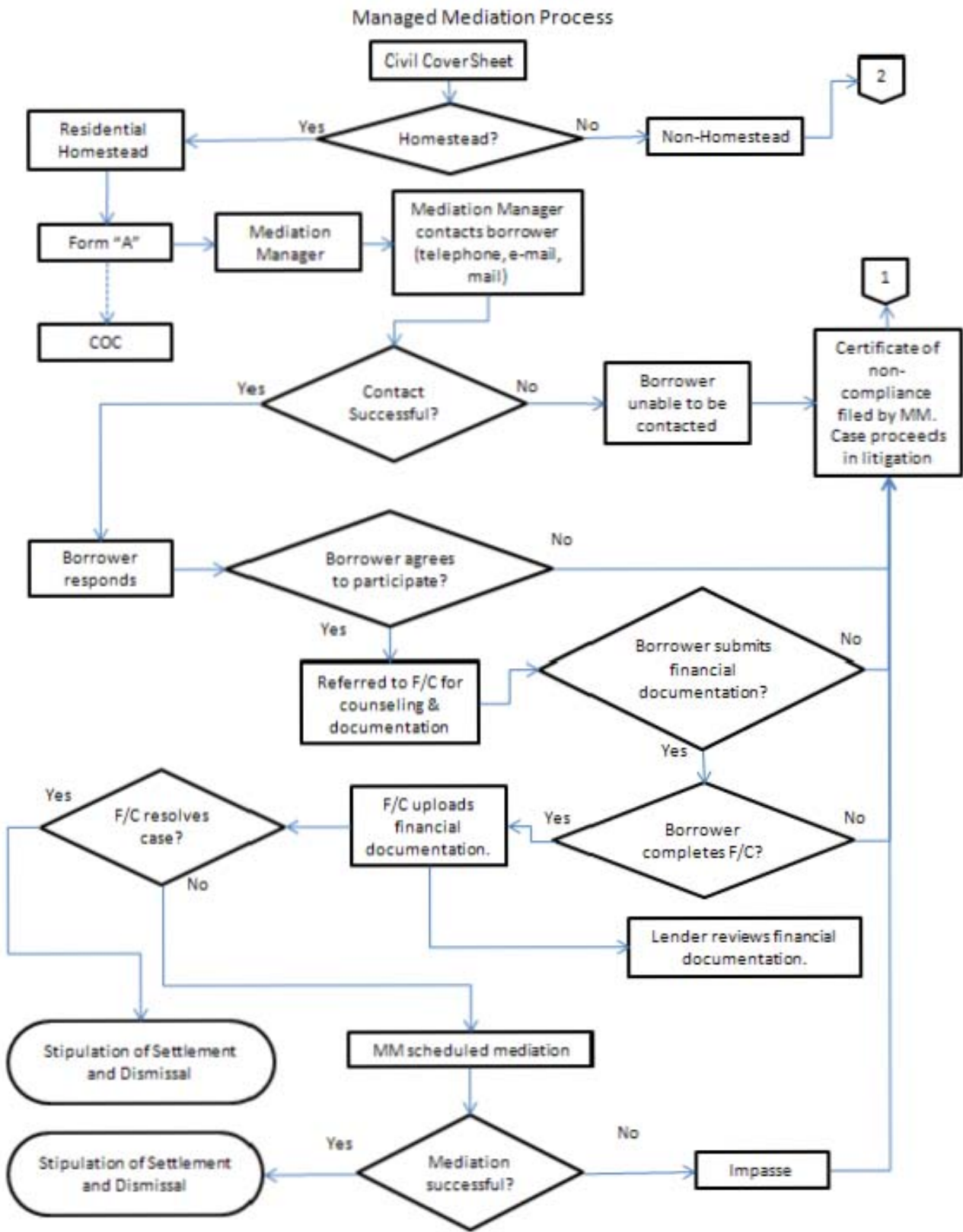
3. Prepare financial statements, financial and performance reports (for example, attendance and failure to attend mediation reports);
4. Establish and maintain performance standards for staff and mediators, including maintaining a roster of mediators comprised of persons who are properly trained in accordance with the standards attached, and who are otherwise qualified, and effective in foreclosure mediation;
5. Assist in specialized training of mediators for workout options and resources;
6. Arrange and pay for interpreters;
7. Bill, collect, deposit, and disburse mediation fees and refunds; pay for necessary services and costs incidental to mediation managing as required to implement mediation administrative order;
8. Establish procedures for managing and communicating with *pro se* litigants and attorneys. This includes implementing a process for prompt outreach to borrower-owners immediately after suit has been filed; the goal of the outreach is to inform mortgagors about the mediation program, invite their participation, and to start the process of referral to mortgage foreclosure counseling and the collection of required financial information;
9. Establish procedures for complying with confidentiality rules;
10. Establish a system for managing mediators that:
 - a. Provides for the impartial assignment of mediators, for example, by the use of a rotating list,
 - b. Is open to qualified supreme court certified mediators who are capable of providing effective services in the residential foreclosure setting, and
 - c. Allows for more than one Mediation Managing entity in the circuit if approved by the chief judge.

11. Monitor or supervise the preparation of mediation settlement agreements;
12. In accordance with the Administrative Order establish the schedule for division of fees between mediators, managers and others;
13. Prepare operational reports as required by the chief judge, regarding the number of cases mediated, impasse or successful mediations, etc.;
14. Solicit qualified mediators and maintain current list of mediators available for residential foreclosure cases;
15. Establish procedures for disqualifying and replacing mediators with ethical or other conflicts;
16. Coordinate the referral of mortgagors to certified foreclosure counselors pre-mediation;
17. Refer unrepresented parties to legal aid, or panels of pro bono or reduced fee attorneys;
18. Facilitate the exchange of documents between the parties, pre- and post-mediation, including the establishment and maintenance of a secure web-based communication system between the Program Manager and all parties to mediation using a platform capable of transmitting financial data, email, mediation forms and attachments, and able to track participant payments and refunds;
19. Maintain for dissemination to owner-borrowers a list of approved foreclosure counselors willing to perform services at the rates established by the court;
20. Answer inquiries from mediators and parties re the mediation process and forms;
21. Establish a system for resolving complaints against mediators and other persons involved in the Managed Mediation Program;
22. Establish procedures for participant evaluation of mediation program services, including satisfaction surveys;

23. Develop the forms and procedures necessary to verify compliance with the residential foreclosure mediation program by lender/servicer representatives, their attorneys, and borrowers; and
24. Using judicial disqualification criteria as a model, disclose to the chief judge any direct or indirect financial ties to lenders/servicers (including any immediate family members), whether present or within the past three (3) years, with a continuing obligation to disclose.

EXHIBIT 14

RMFM PROGRAM FLOWCHART

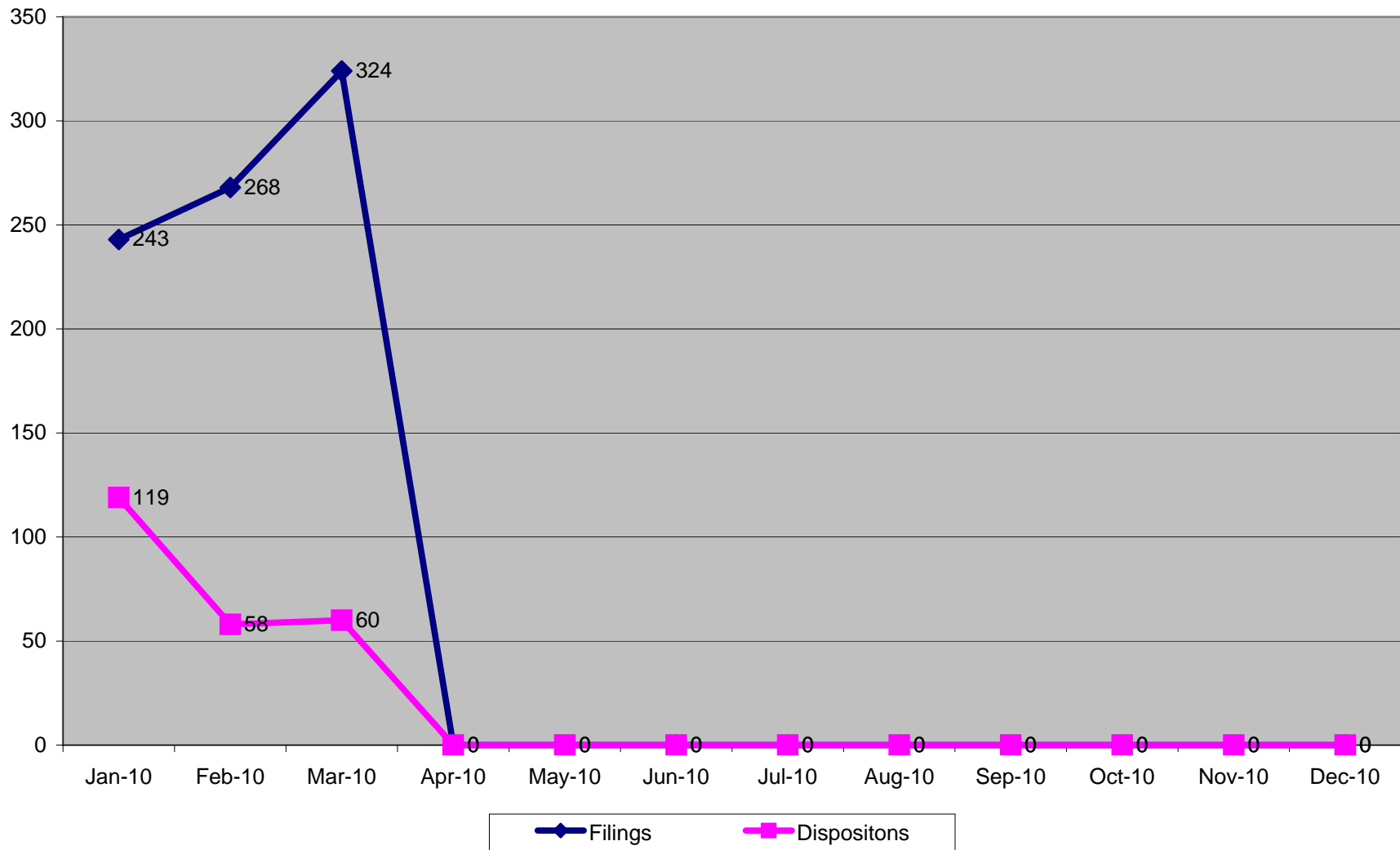


August 12, 2009

From: Charles Francis
To: Wilson, Susan
Date: 8/11/2010 9:50 AM
Subject: Mortgage Foreclosure Program Contact Person for Questions

Please advise send an e-mail to all judges and court staff that all questions, inquiries or any problems encountered with the new foreclosure program should be directed to or brought to the attention of Staff Attorney Cheri-ann Granston at 577-4411 or GranstonC@leoncountyfl.gov.

SECOND JUDICIAL CIRCUIT MORTGAGE FORECLOSURE FILINGS AND DEPOSITIONS



From: Debbie Howells <howellsd@fcourts.org>
To: Trial Court Chief Judges <TrialCourtChiefJudges@fcourts.org>, "JudgeKev...
CC: Trial Court Administrators <TrialCourtAdministrators@fcourts.org>, "Jud...
Date: 10/18/2010 1:53 PM
Subject: Nov. 15 JAC Conference Call

Chief Judge Lee Haworth, Chair of the Judicial Administration Committee, asked us to let you know that a conference call has been scheduled for 12:00 noon on Monday, November 15, 2010. Discussion items will include mortgage foreclosure issues and other matters. To participate in the call, please dial 1-888-808-6959 and, when prompted, enter conference code 9425056 followed by the # key. An agenda and additional information will be provided prior to the call.

Sincerely,

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

From: Gary Phillips <phillipsg@flcourts.org>
To: Trial Court Budget Exec Comm <TrialCourtBudgetExecComm@flcourts.org>
CC: Charlotte Jerrett <jerrettc@flcourts.org>, Dorothy Wilson <burked@flcour...>
Date: 5/19/2010 3:58 PM
Subject: OPS Class Assignment Information - Foreclosure Backlog

Dear Executive Committee Members:

As a follow up from today's meeting, below are the job classes and hourly rates for OPS positions associated with the Economic Recovery/Foreclosure backlog funding:

Magistrates:	Magistrate	\$35.48 hourly
Case Management:	Court Program Specialist II	\$17.36 hourly
Admin. Support:	Senior Secretary	\$11.89 hourly
Hillsborough and Pinellas	Senior Secretary	\$12.10 hourly w/ CAD -
Broward, Dade, Monroe, Palm Beach	Senior Secretary	\$12.48 hourly w/ CAD -

This amount does not include the 7.65% FICA paid by the Branch.

Please let me know if I can provide additional information.

Gary

Gary R. Phillips, SPHR
Chief of Personnel Services
Office of the State Courts Administrator
500 S. Duval Street
Tallahassee, Florida 32399-1900
phone: 850-617-4028
fax: 850-488-3744
email: phillipsg@flcourts.org

Supreme Court of Florida

No. SC09-1460

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

No. SC09-1579

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

[February 11, 2010]

PER CURIAM.

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

Case No. SC09-1460

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

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

1. The Task Force also submitted a companion report entitled “Final Report and Recommendations on Residential Mortgage Foreclosure Cases.” The report urges the adoption of the proposed rule amendments and also contains administrative recommendations. The main recommendation in the report is the ———approval of a Model Administrative Order for a managed mediation program for residential mortgage foreclosure actions for use by the chief judges. The report was addressed separately as an administrative matter. The task forces petition also recommended amendments to form 1.997 (Civil Coversheet). However, the civil coversheet was the subject of another case, case number SC08-1141, and the Task

Court, the proposals were published for comment on an expedited basis.

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

First, rule 1.110(b) is amended to require verification of mortgage foreclosure complaints involving residential real property. The primary purposes of this amendment are (1) to provide incentive for the plaintiff to appropriately investigate and verify its ownership of the note or right to enforce the note and ensure that the allegations in the complaint are accurate; (2) to conserve judicial resources that are currently being wasted on inappropriately pleaded "lost note"

Force's proposals with regard to the civil coversheet were addressed in that case. See In re Amendments to Florida Rules of Civil Procedure—Management of Cases Involving Complex Litigation, 34 Fla. L. Weekly S576 (Fla. Oct. 15, 2009).

counts and inconsistent allegations; (3) to prevent the wasting of judicial resources and harm to defendants resulting from suits brought by plaintiffs not entitled to enforce the note; and (4) to give trial courts greater authority to sanction plaintiffs who make false allegations.

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

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

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

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

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

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

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

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

(a) Unknown to the affiant; or

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

(c) In the state, but that he or she has been absent from the state for more than 60 days next preceding the making of the sworn statement, or conceals himself or herself so that process cannot be

personally served, and that affiant believes that there is no person in the state upon whom service of process would bind said absent or concealed defendant.

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

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

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

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

Case No. SC09-1579

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

First, to conform to current statutory requirements, a notice to lienholders and directions to property owners as to how to claim a right to funds remaining

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

after public auction is added to the form. See § 45.031(1), Fla. Stat. (2009).

Additionally, to conform to current statutory provisions allowing the clerk of court to conduct judicial sales via electronic means, the form is amended to accommodate this option. See § 45.031(10), Fla. Stat. (2009).

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

3. An explanatory committee note is also added.

Florida Bar's Real Property, Probate, and Trust Law Section to improve the form's clarity and readability and better conform to prevailing practices in the courts.

However, one of the changes suggested by the Real Property, Probate, and Trust Law Section and incorporated by the committee into its proposal was the addition of a new paragraph stating that a foreclosure sale shall not begin until a representative of the plaintiff is present and that the plaintiff has the right to cancel the sale upon notice to the clerk. Obviously, including such a provision, as standard, in the final judgment of foreclosure form would be at odds with our adoption of new form 1.996(b) (Motion to Cancel and Reschedule Foreclosure Sale). Accordingly, we decline to adopt this particular amendment. Also, in light of our adoption of the Motion to Cancel and Reschedule Foreclosure Sale as new form 1.996(b), we renumber the Final Judgment of Foreclosure Form as form 1.996(a).

Conclusion

Accordingly, the Florida Rules of Civil Procedure and the Forms for Use with Rules of Civil Procedure are hereby amended as set forth in the appendix to this opinion. New language is underscored; deleted language is struck through. Committee notes are offered for explanation only and are not adopted as an official part of the rules. The amendments shall become effective immediately upon the

release of this opinion. Because the amendments to form 1.996(a) (Final Judgment of Foreclosure) were not published by the Court for comment prior to their adoption, interested persons shall have sixty days from the date of this opinion in which to file comments, on those amendments only, with the Court.⁴

It is so ordered.

QUINCE, C.J., and PARIENTE, LEWIS, LABARGA, and PERRY, JJ., concur. CANADY, J., concurs in part and dissents in part with an opinion, in which POLSTON, J., concurs.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

CANADY, J., concurring in part and dissenting in part.

Because I am concerned that requiring prior judicial approval for the cancellation of foreclosure sales may produce untoward results, I dissent from the adoption of form 1.996(b). I would have instead adopted the proposal suggested by the Real Property, Probate, and Trust Law Section for the addition of a

4. An original and nine paper copies of all comments must be filed with the Court on or before April 12, 2010, with a certificate of service verifying that a copy has been served on the Committee Chair, Mark A. Romance, 201 S. Biscayne Blvd, Suite 1000, Miami, FL 33131-4327, as well as separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Committee Chair has until May 3, 2010, to file a response to any comments filed with the Court. Electronic copies of all comments and responses also must be filed in accordance with the Court's administrative order in In re Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. AOSC04-84 (Sept. 13, 2004).

paragraph to the form final judgment of foreclosure stating that a foreclosure sale shall not begin until a representative of the plaintiff is present and that the plaintiff has the right to cancel the sale upon notice to the clerk.

POLSTON, J., concurs.

Two Cases:

Original Proceeding – Florida Rules of Civil Procedure

Mark A. Romance, Chair, Civil Procedure Rules Committee, Miami, Florida; Jennifer D. Bailey, Chair, Task Force on Residential Mortgage Foreclosure Cases, Eleventh Judicial Circuit, Miami, Florida and Alan B. Bookman, Task Force on Residential Mortgage Foreclosures, Pensacola, Florida; John F. Harkness, Jr., Executive Director, and Madelon Horwich, Bar Staff Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioners

Henry P. Trawick, Jr., Sarasota, Florida; Virginia Townes of Akerman, Senterfitt, Orlando, Florida on behalf of The Florida Bankers Association; Marc A. Ben-Ezra of Ben-Ezra and Katz, P.A., Fort Lauderdale, Florida; Carolina A. Lombardi, Marcia K. Cypen, and John W. McLuskey, Legal Services of Greater Miami, Inc., Miami, Florida, Kendall Coffey and Jeffrey B. Crockett of Coffey Burlington, LLP, Miami, Florida, Randall C. Berg, Jr. and Joshua A. Glickman, Florida Justice Institute, Inc., Miami, Florida, and Kent R. Spuhler, Florida Legal Services, Inc., Tallahassee, Florida; B. Elaine New, Court Counsel, on behalf of J. Thomas McGrady, Chief Judge, Sixth Judicial Circuit, St. Petersburg, Florida; Alice M. Vickers, Florida Legal Services, Inc., Tallahassee, Florida, Lynn Drysdale, Jacksonville Area Legal Aid, Inc., Jacksonville, Florida, Jeffrey Hearne, Legal Services of Greater Miami, Inc., Miami, Florida, and James R. Carr, Florida Rural Legal Services, Inc., Lakeland, Florida, on behalf of the Housing Umbrella Group and the Consumer Umbrella Group of Florida Legal Services, Inc.; Scott Manion, Tallahassee, Florida, on behalf of Legal Services of North Florida, Inc.; Edward J. Grunewald, Tallahassee, Florida, on behalf of The North Florida Center for Equal

Justice, Inc.; Thomas H. Bateman, III of Messer, Caparello, and Self, P.A., Tallahassee, Florida, and Janet E. Ferris, Tallahassee, Florida; Ronald R. Wolfe, Tampa, Florida, on behalf of Florida Default Law Group, P.L.; Judge William D. Palmer, Chair, Committee on ADR Rules and Policy, Fifth District Court of Appeal, Daytona Beach, Florida, on behalf of the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy; Lisa Epstein, West Palm Beach, Florida,

Responding with comments

APPENDIX

RULE 1.110. GENERAL RULES OF PLEADING

(a) [no change]

(b) **Claims for Relief.** A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim, must state a cause of action and shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the ultimate facts showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which the pleader deems himself or herself entitled. Relief in the alternative or of several different types may be demanded. Every complaint shall be considered to demand general relief.

When filing an action for foreclosure of a mortgage on residential real property the complaint shall be verified. When verification of a document is required, the document filed shall include an oath, affirmation, or the following statement:

“Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief.”

(c) - (h) [no change]

Committee Notes
[no change]

FORM 1.942. AFFIDAVIT OF DILIGENT SEARCH AND INQUIRY

I, (full legal name) (individually or an Employee of _____), being sworn, certify that the following information is true:

1. I have made diligent search and inquiry to discover the current residence of _____, who is [over 18 years old] [under 18 years old] [age is unknown] (circle one). **Refer to checklist below and identify all actions taken (any additional information included such as the date the action was taken and the person with whom you spoke is helpful) (attach additional sheet if necessary):**

[check **all** that apply]

_____ Inquiry of Social Security Information

_____ Telephone listings in the last known locations of defendant's residence

_____ Statewide directory assistance search

_____ Internet people finder search {specify sites searched}

_____ Voter Registration in the area where defendant was last known to reside.

_____ Nationwide Masterfile Death Search

_____ Tax Collector's records in area where defendant was last known to reside.

_____ Tax Assessor's records in area where defendant was last known to reside

_____ Department of Motor vehicle records in the state of defendant's last known address

_____ Driver's License records search in the state of defendant's last known address.

_____ Department of Corrections records in the state of defendant's last known address.

_____ Federal Prison records search.

_____ Regulatory agencies for professional or occupational licensing.

_____ Inquiry to determine if defendant is in military service.

_____ Last known employment of defendant.

{List all additional efforts made to locate defendant}

Attempts to Serve Process and Results

I inquired of the occupant of the premises whether the occupant knows the location of the borrower-defendant, with the following results:

2. _____ **current residence**

[check **one** only]

a. _____ 's current residence is unknown to me

b. _____ 's current residence is in some state or country
other than Florida and _____ 's last known address is:

c. The _____, having residence in Florida, has been absent from Florida for more than 60 days prior to the date of this affidavit, or conceals him (her) self so that process cannot be served personally upon him or her, and I believe there is no person in the state upon whom service of process would bind this absent or concealed _____.

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated: _____

Signature of Plaintiff

Printed Name: _____

Address: _____

City, State, Zip: _____

Phone: _____

Telefacsimile: _____

STATE OF _____
COUNTY OF _____

Sworn to or affirmed and signed before me on this _____ day of _____, 20____ by _____.

NOTARY PUBLIC, STATE OF _____

(Print, Type or Stamp Commissioned Name of Notary Public)

Personally known

Produced identification

Type of identification produced: _____

NOTE: This form is used to obtain constructive service on the defendant.

FORM 1.996(a). FINAL JUDGMENT OF FORECLOSURE

FINAL JUDGMENT

This action was tried before the court. On the evidence presented

IT IS ADJUDGED that:

1. Plaintiff,(name and address)....., is due as principal, \$..... as interest to date of this judgment, \$..... for title search expense, \$..... for taxes, \$..... for insurance premiums, \$..... for attorneys' fees, with \$..... for court costs now taxed, less \$..... for undisbursed escrow funds and less \$..... for unearned insurance premiums, under the note and mortgage sued on in this action, making a total sum of \$....., that shall bear interest at the rate of% a year.

Principal	\$.....
Interest to date of this judgment
Title search expense
Taxes
<u>Attorneys' fees</u>	
Finding as to reasonable number of hours:	
Finding as to reasonable hourly rate:	
Attorneys' fees total
Court costs, now taxed
Other:
Subtotal	\$.....
LESS: Escrow balance
LESS: Other
TOTAL	\$.....

that shall bear interest at the rate of% a year.

2. Plaintiff holds a lien for the total sum superior to ~~any~~all claims or estates of defendant(s),(name and address, and social security number if known)....., on the following described property in County, Florida:

(describe property)

3. If the total sum with interest at the rate described in paragraph 1 and all costs accrued subsequent to this judgment are not paid, the clerk of this court shall sell the property at public sale on(date)....., ~~between 11:00 a.m. and 2:00 p.m.~~ to the highest bidder for cash, except as prescribed in paragraph 45, at the ~~door of the courthouse~~ in located at(street address of courthouse)..... in County in(name of city)....., Florida, in accordance with section 45.031, Florida Statutes, using the following method (CHECK ONE):

At(location of sale at courthouse; e.g., north door)....., beginning at(time of sale)..... on the prescribed date.

By electronic sale beginning at(time of sale)..... on the prescribed date at(website).....

4. Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the clerk if plaintiff is not the purchaser of the property for sale, provided, however, that the purchaser of the property for sale shall be responsible for the documentary stamps payable on the certificate of title. If plaintiff is the purchaser, the clerk shall credit plaintiff's bid with the total sum with interest and costs accruing subsequent to this judgment, or such part of it, as is necessary to pay the bid in full.

5. On filing the certificate of title the clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of plaintiff's costs; second, documentary stamps affixed to the certificate; third, plaintiff's attorneys' fees; fourth, the total sum due to plaintiff, less the items paid, plus interest at the rate prescribed in paragraph 1 from this date to the date of the sale; and by retaining any remaining amount pending the further order of this court.

6. On filing the certificate of ~~title sale,~~ title sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the notice of lis pendens shall be foreclosed of all estate or claim in the property ~~and the purchaser at the sale,~~ except as to claims or rights under chapter 718 or chapter 720, Florida Statutes, if any. Upon the filing of the certificate of title, the person named on the certificate of title shall be let into possession of the property. If any defendant remains in possession of the property, the clerk shall without further order of the court issue forthwith a writ of possession upon request of the person named on the certificate of title.

7. Jurisdiction of this action is retained to enter further orders that are proper including, without limitation, ~~writs of possession and a~~ deficiency judgment.

IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THE FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK

NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

[If the property being foreclosed on has qualified for the homestead tax exemption in the most recent approved tax roll, the final judgment shall additionally contain the following statement in conspicuous type:]

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, (INSERT INFORMATION FOR APPLICABLE COURT) WITHIN 10 DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT (NAME OF LOCAL OR NEAREST LEGAL AID OFFICE AND TELEPHONE NUMBER) FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

ORDERED at, Florida, on(date).....

Judge _____

NOTE: Paragraph 1 must be varied in accordance with the items unpaid, claimed, and proven. The form does not provide for an adjudication of junior lienors' claims nor for redemption by the United States of America if it is a defendant. The address of the person who claims a lien as a result of the judgment must be included in the judgment in order for the judgment to become a lien on real estate when a certified copy of the judgment is recorded. Alternatively, an affidavit with this information may be simultaneously recorded. For the specific requirements, see section 55.10(1), Florida Statutes; *Hott Interiors, Inc. v. Fostock*, 721 So. 2d 1236 (Fla. 4th DCA 1998). ~~The address and social security number (if known) of each person against whom the judgment is rendered must be included in the judgment, pursuant to section 55.01(2), Florida Statutes.~~

Committee Notes

1980 Amendment. The reference to writs of assistance in paragraph 7 is changed to writs of possession to comply with the consolidation of the 2 writs.

2010 Amendment. Mandatory statements of the mortgagee/property owner's rights are included as required by the 2006 amendment to section 45.031, Florida Statutes. Changes are also made based on 2008 amendments to section 45.031, Florida Statutes, permitting courts to order sale by electronic means.

Additional changes were made to bring the form into compliance with chapters 718 and 720 and section 45.0315, Florida Statutes, and to better align the form with existing practices of clerks and practitioners. The breakdown of the amounts due is now set out in column format to simplify calculations. The requirement that the form include the address and social security number of all defendants was eliminated to protect the privacy interests of those defendants and in recognition of the fact that this form of judgment does not create a personal final money judgment against the defendant borrower, but rather an in rem judgment against the property. The address and social security number of the defendant borrower should be included in any deficiency judgment later obtained against the defendant borrower.

FORM 1.996(b). MOTION TO CANCEL AND RESCHEDULE FORECLOSURE SALE

Plaintiff moves to cancel and reschedule the mortgage foreclosure sale because:

1. On this Court entered a Final Judgment of Foreclosure pursuant to which a foreclosure sale was scheduled for , 20 .

2. The sale needs to be canceled for the following reason(s):

a. Plaintiff and Defendant are continuing to be involved in loss mitigation;

b. Defendant is negotiating for the sale of the property that is the subject of this matter and Plaintiff wants to allow the Defendant an opportunity to sell the property and pay off the debt that is due and owing to Plaintiff.

c. Defendant has entered into a contract to sell the property that is the subject of this matter and Plaintiff wants to give the Defendant an opportunity to consummate the sale and pay off the debt that is due and owing to Plaintiff.

d. Defendant has filed a Chapter Petition under the Federal Bankruptcy Code;

e. Plaintiff has ordered but has not received a statement of value/appraisal for the property;

f. Plaintiff and Defendant have entered into a Forbearance Agreement;

g. Other

3. If this Court cancels the foreclosure sale, Plaintiff moves that it be rescheduled.

I hereby certify that a copy of the foregoing Motion has been furnished by U.S. mail postage prepaid, facsimile or hand delivery to this day of , 20 .

NOTE. This form is used to move the court to cancel and reschedule a foreclosure sale.

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA, COUNTY, FLORIDA**

vs.

Case No.

_____ /

**ORDER TO SHOW CAUSE WHY COMPLAINT TO FORECLOSE
HOMESTEAD SHOULD NOT BE DISMISSED FOR FAILURE TO
FILE FORM A AND/OR TO PAY MANAGED MEDIATION FEE**

THE COURT has conducted a review of the complaint and its exhibits, and it appears from the record that the complaint seeks to foreclose a mortgage on homestead property. Twelfth Circuit Administrative Order 2010-11.1, requires plaintiffs filing such complaints to file with the clerk a completed **FORM A** and to pay a fee to the circuit's Program Manager, the Collins Center for Public Policy, in order to facilitate the circuit's managed mediation program. The administrative order further requires a copy of **FORM A** to be provided to the Collins Center for Public Policy, with a fee of \$400.00. This is a mandatory requirement implementing Supreme Court Administrative Order AOSC09-54.

NOW, THEREFORE, IT IS ORDERED:

Plaintiff has **ten (10) calendar days** from the date of this order to show cause why this case should not be dismissed for failure to comply with Twelfth Circuit Administrative Order 2010-11.1 by showing that the property is NOT homestead, or to file with the clerk within **ten (10) calendar days** a **Notice of Filing**, showing that Form A has been filed and that the requisite mediation fee has been paid to the Collins Center for Public Policy. A copy of the **Notice of Filing** shall be provided to the assigned division judge at the following address:

Sarasota County Cases: 2002 Ringling Blvd., Sarasota, FL 34237.

Manatee County Cases: 1051 Manatee Ave. West, Bradenton, FL 34205

Failure to timely show cause, or timely file the Notice of Filing with FORM A, pay the fee, or to provide a copy to the court may result in dismissal of this action without further notice. In such event, a new complaint and filing fee will be required should plaintiff elect to re-file to foreclose the same homestead property.

DONE AND ORDERED in Sarasota, Sarasota County, Florida, this ____ day of _____, 2010.

Circuit Judge

cc: Plaintiff's counsel
Defendant's counsel
Plaintiff's circuit liaison

2nd Cir 0304

From: David Wolfson
To: Francis, Charles
CC: Slayden, Grant
Date: 11/4/2010 10:30 AM
Subject: Order for trial

Hi Judge: If you will send me the Order for Trial, I will set the earliest 16 cases on the PM calendar on December 16. Do we want to set all the cases for one firm (upside they only have to make one appearance; downside, they have to prepare for 16 trials?)

From: Charles Francis
To: gmc@clerk.co.gadsden.fl.us
Date: 5/21/2010 1:44 PM
Subject: Pending Mortgage Foreclosures

Thank you for this information. We will plug this into our calculations and advise as to foreclosure docket dates in the next couple of weeks. As I told Mr. Thomas, I do not anticipate a foreclosure docket with a senior judge prior to the end of July. With these figures, and assuming the trend will hold, it looks a though we will have 4-5 dockets during the fiscal year starting July 1, 2010.

Proper Party to bring Foreclosure Suit

- 1) *Who is the proper party plaintiff? MERS, Bank 1? Is the 3rd party assignee/servicing agent to the note proper party to bring foreclosure suit?* MERS, the 3rd party assignee is the proper party to bring the suit. The written assignment acts as constructive delivery of note.
 - a. The 3rd party assignee, e.g. MERS, is the proper party to bring foreclosure suit. As seen in *MERS v. Azize*, 965 So.2d 151, notes are frequently transferred to MERS for the purpose of foreclosure without MERS actually obtaining the beneficial interest in the note. To facilitate the handling of these transactions, the owners contract with a servicing agent to collect the payments and distribute the proceeds to the owners. Such collection agents have been determined to have standing to seek enforcement of such notes for the benefit of the owners. See *Greer v. O'Dell*, 305 F.3d 1297 (11th Cir. 2002).
 - b. Company that acted as collection and litigation agent for owners of notes and mortgages had standing to bring foreclosure action based on note of which it was the holder, even though company did not own the note; no substantive rights, obligations, or defenses were affected by company's status with respect to the mortgage and note. In accordance with the usual practice, MERS was the only holder (by delivery) of the note. *MERS v. Revoredo, et al.*, 955 So.2d 33 (Fla. 3rd DCA 2007).
 - c. While it is true under Florida law that delivery is necessary to validate a negotiable instrument, delivery of a written assignment of an instrument has been held effective as a constructive delivery without delivery of the negotiable instrument itself. An assignee of a mortgage and note assigned as collateral security is the real party in interest, holds legal title to the mortgage and the note, and is the proper party to file suit foreclose the mortgage. *Laywers Title Ins. Co., Inc. v. Novastar Mortg., Inc.*, 862 So.2d 793 (Fla. 4th DCA 2003).
- 2) *If Bank 1 doesn't enjoin MERS, is the action subject to dismissal for not joining an indispensable party? Is MERS an indispensable party to the foreclosure action?* MERS is not an indispensable party unless the written assignment terminated Bank 1's right to accelerate or foreclose during period of assignment. However, MERS or assignees are real parties in interest for such matters covered in the assignment. Therefore precludes Bank 1 from filing suit on such matters. For example, if assignee as been assigned note for collection purposes, then assignee is a real party in interest only for collection purposes or if assignment is as collateral security, then assignee is real party in interest with total power to foreclose.
 - a. The assignee of a mortgage and note assigned as collateral security is the real party in interest. *Laing v. Gainey Builders, Inc.*, 184 So.2d 897 (Fla. 1st DCA 1966). Once the mortgagee pledges a mortgage as collateral, it is divested of the power to foreclose. *Smith v. F.D.I.C.*, 61 F.3d 1552 (11th Cir.1995) (determining Florida law citing *Laing*). In such instances, a mortgagee has no standing to bring a foreclosure suit. See *Crichlow v. Maryland Casualty Co.*, 116 Fla. 226, 156 So. 440 (1933) (mortgagee is estopped to deny validity of assignment of mortgage and note; assignee is real party in interest). *A&B Discount Lumber & Supply, Inc. v. Mitchell*, 799 So.2d 301 (Fla. 5th DCA 2001).
 - b. Foreclosure complaint was properly dismissed for failure to join assignee bank as an indispensable party to mortgage, where assignment unequivocally terminated

mortgagees' right to accelerate and foreclose during period of assignment.
Greenwald v. Triple D Properties, Inc., 424 So.2d 185 (Fla. 4th DCA 1983).

- 3) *Don't 'unknown tenants' or 'unknown spouses', once known, have to be substituted as parties?* Spouses have a independent contractual right to be a party to the suit, however, if not joined, only the effectiveness of the decree is limited. Tenants only have a right to redeem through mortgagor's rights before the issuance of certificate of title following foreclosure, even if they were not made a party to the foreclosure proceedings.
- a. Mortgagor's estranged wife who joined in mortgage but did not sign note was necessary party to foreclosure action, where wife did not assign her right of redemption.
 - i. However, no Florida case has been found that holds void or ineffective a decree of foreclosure with respect to those who were parties; it is effective as to them, although ineffective as to those who were absent.... Thus, when a number of persons have interests in a parcel of land, the foreclosure of a mortgage upon that land affects the interests on only such persons as were made parties to the foreclosure proceeding. An owner of an interest in the land will have that interest terminated by foreclosure against him, but one not made a party to the proceeding is not affected by it. In a general sense, therefore, although the effectiveness of the decree is diminished if there is less than full joinder, it is understandable that courts allow the plaintiff-mortgagee to proceed without full joinder and affirm the "incomplete decree." ... The decree's effectiveness may be limited by incomplete joinder, but it will have some effect, presumably that effect desired by the mortgagee. Neither those who are parties nor those who are absent are prejudiced by non-joinder. The possibility of further litigation alone is not sufficient to require complete joinder. The party most interested in the matter can, and usually will, accomplish complete joinder. *Sudhoff v. Federal Nat. Mortg. Ass'n*, 942 So.2d 425 (Fla. 5th DCA 2006).
 - b. The Burnses, as lessees of the property, could only redeem the property under or through Walther's rights as mortgagor. They had no independent right to redemption. Under section 45.0315, Florida Statutes (1995), "the mortgagor or the holder of any subordinate interest" may redeem the property anytime before issuance of a certificate of title following the foreclosure sale. However, once the certificate is issued, redemption is precluded, even if the party asserting the right was not made party to the foreclosure proceedings. *Burns v. Bankamerica Nat. Trust Co.*, 719 So.2d 999 (Fla. 5th DCA 1998).

From: David Wolfson
To: Francis, Charles
Date: 11/9/2010 8:46 AM
Subject: Re: AO 10-05
Attachments: Amendments to AO 2010-05.doc

Ok, here's the new draft.

From: Charles Francis
To: Vance, Kelly
CC: Granston, Cheri-Ann; Moayad, Patricia
Date: 8/9/2010 11:14 AM
Subject: Re: Case Managers - Work Schedule

Sounds good. Thank you.

>>> Kelly Vance 8/9/2010 11:09 AM >>>
Judge Francis,

Good Morning,

Cheri-ann asked me to update you as to my work schedule for this fall semester of school. The semester commences on Monday, August 23rd, and If you do not advise otherwise, I would like to work my case manager hours every Monday from 9 - noon and Wednesday from 9 - 3pm for a total of 9 hours a week. Also, I will be on vacation from August 16th through August 20th and will complete all my hours and required work for this pay period this week.

Respectfully,

Kelly Vance
Mortgage Foreclosure Case Manager

From: Charles Francis
To: Wilson, Susan
Date: 7/7/2010 1:32 PM
Subject: Re: Contact List for Mortgage Foreclosure Project

If you don't have Jefferson's by the end of the week, please let me know on Monday.

>>> Susan Wilson 7/7/2010 1:28 PM >>>
...is attached. I'm still waiting for information on the Jefferson clerk contact information.

Thank you,
Susan

From: "Perry, Belvin" <ctjubp1@ocnjcc.org>
To: "Farina, Joseph" <JFarina@jud11.flcourts.org>, "Laurent, John" <jlaurent...>
Date: 10/14/2010 5:26 PM
Subject: RE: Foreclosure project

Joe, I think it is a little too early to do this at this time. I do not know about your circuit, but even if they stop filing new cases, there is more than enough work to keep the judges busy in my circuit. There are thousands of cases that need goose orders done and files that need to be carefully reviewed. We need not act to quickly. We really need to talk with the Chief Judges to get their take on the situation. Every circuit and its problems with foreclosure are different.

Belvin Perry, Jr.

From: Farina, Joseph [mailto:JFarina@jud11.flcourts.org]
Sent: Thursday, October 14, 2010 2:13 PM
To: Laurent, John; Steinbeck, Margaret; Perry, Belvin; Charles Francis; Carol L Ortman/17THCircuit
Subject: Foreclosure project

John:

Given the financial service industry's abating pending foreclosure actions, reviewing final judgments based on questionable affidavits and providing mortgage modifications, is it needed, beneficial or advisable for representatives of the court (perhaps the TCBC Executive Committee) to meet with the President of the Senate and Speaker of the House (or their chiefs of staff) to discuss whether the court's foreclosure project and legislative funding expenditures continue beyond December 31, 2010?

If the answer is yes, would a separate discussion with our business partners be needed before or after such a meeting; and should the clerk's be part of this process, and if so, when?

Joe

From: David Wolfson
To: Francis, Charles
CC: Slayden, Grant
Date: 11/15/2010 8:43 AM
Subject: Re: Foreclosure Verification

I have notified the case managers. My plan, with your approval, is to check the verifications when we handle the file for the first time. Otherwise we will have to pull more than 1000 files. The starting point is February 1, 2010?

From: Terry Lewis
To: Cooper, John; Dempsey, Angela; Francis, Charles; Fulford, Jackie; Sa...
CC: Granston, Cheri-Ann; Moayad, Patricia; Wolfson, David
Date: 11/10/2010 5:30 PM
Subject: Re: Foreclosures - Verified Complaint

I agree with your interpretation.

>>> Charles Francis 11/10/2010 11:23 AM >>>

A new issue is raised as the result of the verification requirement of Rule 1.110(b), Fla. R. Civ. P. Who should or can legally sign the verification. The rule does not specify. I have noticed some being signed by the attorney, some signed by the servicer, and others by the named plaintiff.

The rule provides as follows:

When filing an action for foreclosure of a mortgage on residential real property the complaint shall be verified. When verification of a document is required, the document filed shall include an oath, affirmation, or the following statement:

"Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief."

In the opinion adopting the rule, the Court stated:

First, rule 1.110(b) is amended to require verification of mortgage foreclosure complaints involving residential real property. The primary purposes of this amendment are (1) to provide incentive for the plaintiff to appropriately investigate and verify its ownership of the note or right to enforce the note and ensure that the allegations in the complaint are accurate; (2) to conserve judicial resources that are currently being wasted on inappropriately pleaded "lost note" counts and inconsistent allegations; (3) to prevent the wasting of judicial resources and harm to defendants resulting from suits brought by plaintiffs not entitled to enforce the note; and (4) to give trial courts greater authority to sanction plaintiffs who make false allegations.

Effective Immediately. February 11, 2010

In re Amendments To The Florida Rules Of Civil Procedure (Fla.,2010), 44 So.3d 555 (Fla.,2010)

In light of the stated purpose of the rule, it appears that the Plaintiff should sign. The case law is pretty clear in numerous other areas of the law that the party cannot be sanctioned for the acts of the attorney, unless the party participated or somehow knew or contributed to the wrongdoing. If the purpose is to "verify", and the attorney signs and files a verified complaint without checking with or verifying anything with the party, as was the case with most of the so called "lost note counts", then you probably would not be justified in punishing the plaintiff, and nothing will then be accomplished by the verification.

Your thoughts if any?

From: Charles Francis
To: Dew, John
Date: 6/9/2010 8:34 AM
Subject: RE: Foreclosures

John:

I have talked to all of my clerks and have determined the number of court dates in each county. Leon County will have forty-five (45) full day foreclosure dockets spread out through the year commencing July 12 with the first one. No more than one judge per day and approximate four days per month in Leon.

In Gadsen, Wakulla, and Franklin Counties we have allocated five(5) days each to be spread out through the year with the first one being in August.

There will not be a full day docket in Liberty or Jefferson, but there will be three (3) to four(4) managed foreclosure docket days in which either the entire morning or afternoon will be dedicated to mortgage foreclosures. It is anticipated Mr. Hill and Mr. Reams will require some overtime assistance to process the paper work on those days.

>>> John Dew <JohnDew@flccoc.org> 6/8/2010 9:01 AM >>>

Good Morning Judge Francis.

It was good seeing you at the TCBC meeting on Friday.

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

We appreciate your help.

Thanks,

John

From: John Dew
Sent: Friday, May 28, 2010 5:02 PM
To: francisc@leoncountyfl.gov
Cc: Kristine Slayden
Subject: Foreclosures

Good Afternoon Judge Francis.

Please find attached a request from Clerk Howard Forman, Chair of the Clerk of Court Operations Corporation, for your assistance. The Corporation is responsible for determining the amount of

resources to provide to Clerks for the purpose of helping move backlogged foreclosure cases.
Please call me at (850) 386-2223 if you have any questions.

Thank you in advance.

John Dew
CCOC Executive Director

From: Charles Francis
To: Granston, Cheri-Ann
Date: 8/16/2010 4:17 PM
Subject: Re: Form A
Attachments: Order dismiss NO FORM A.doc

Take a shot at doctoring up the attached order to be in our circuit.

>>> Cheri-Ann Granston 8/16/2010 4:11 PM >>>
Good Afternoon Judge Francis:

You asked me to research what the other circuits are doing to police and enforce the Form A requirement. Here is what I have found so far.

Most circuits have the Program Manager keep track of compliance with the Form A requirement. The Program Manager is responsible for sending compliance reports on a regular basis to the Chief Judge. These reports describe which cases have complied with the Form A requirement and which cases have not.

For those cases that have not filed a Form A, most circuits issue an Order to Show Cause to the Plaintiff.

The 8th circuit in particular has taken an aggressive approach and promises to dismiss the action entirely for those cases that fail to file the Form A or fail to comply with any step in the mediation program. However, when I contacted the circuit, I was advised that they first file an Order to Show Cause as well. They also advised that they have not had to file such an order as yet or dismiss any cases for failing to comply with the mediation procedures.

The 6th circuit has taken probably the most lenient approach. In this circuit, the Program Manager first contacts the plaintiff or the plaintiff's counsel to attempt to achieve compliance. If this fails, then a Notice of Lender's Failure to Comply with Foreclosure Mediation Program is filed. The 11th circuit was the only circuit I was able to get a response from regarding the types of sanctions they impose. They reported that they keep a noncompliance calendar to determine which cases have not filed the Form A. In the beginning they were issuing Orders to Show Cause when the plaintiff failed to file the Form A. In a few cases they even held the plaintiff in contempt of court. However, they have been unable to keep up with enforcing this requirement due to their excessive case load, so instead they have resorted to continuing the summary judgment hearing, when the case progresses that far, and sending the parties to mediation. Before the plaintiff can proceed any further, the parties have to complete mediation (as long as the borrower doesn't opt out).

I'm still checking on a few other circuits, but I wanted to let you know what I've discovered thus far.

Thanks,

Cheri

>>> Charles Francis 8/11/2010 1:21 PM >>>

Thank you Cheri-ann. I don't like letting them set their own hearing dates. If it was regular private attorneys, then it might be worth trying, but the mills would have to abuse the process in order to try and protect hearing times for cases not yet ready to go. They might intend to have

them ready, but there is no indication that it will happen.

Would you or Patricia inquire of some of the other circuits as to how they police and enforce the Form A requirement. How do they know when it hasn't been filed, and what do they do? I would think a 10 day show cause order or dismissal without prejudice may take care of the problem, but I would like to kind of poll some of the other circuits.

>>> Cheri-Ann Granston 8/11/2010 1:14 PM >>>
Good Afternoon Judge Francis:

You asked me to verify which party was responsible for filing the Form A in mortgage foreclosure actions. According to your AO, the plaintiff must file a completed Form A with the Clerk of Court upon filing suit. Once the clerk receives the Form A, he then forwards it to Maryanne and she contacts the borrower within 10 days.

Additionally, you asked me to research the other circuits to find out how often they hear summary judgment motions and get a general idea of what their procedures are. Here is what I found:

A majority of the circuits have created a special division for foreclosure cases. Summary Judgment motions are heard by this division. Usually 1 judge is assigned to the division, in some circuits it's a Senior Judge.

A few of the circuits created general hearing days i.e. Monday, Wednesday, Thursday in which hearings take place all day til around 4.

At least 1 circuit (17th Circuit) has hearings everyday from 9:30 -12:00 and 1:30-4:00.

The 11th circuit has hearings everyday, but does them in hourly increments beginning at 10:30.

The 18th circuit hears SJ motions every Monday and Wednesday morning. Its limit is 150 cases each morning.

Something else I found interesting is that a few of the circuits have the parties set their hearings on-line themselves, and at least 1 circuit required the plaintiff to upload the motion and notice of hearing contemporaneously with setting the hearing. I'm not sure if this is something you'd prefer to avoid doing, but I was thinking it might help create a smoother process for setting hearings and the parties will only be allowed to set a hearing on available dates and times. Just something to consider.

Thanks,

Cheri

From: Charles Francis
To: Goodner, Lisa
Date: 6/8/2010 10:37 AM
Subject: Re: FW: distance foreclosure course for senior judges

ok by me!

>>> Lisa Goodner <goodnerl@flcourts.org> 6/8/2010 10:15 AM >>>

I say we go with this program, as well as making a CD of the presentation available to senior judges and magistrates hearing the cases (rather than inviting the magistrates to attend the conference.) Maybe not as thorough as we would have done otherwise but as busy as everyone is, a compromise?

From: Martha Martin
Sent: Tuesday, June 08, 2010 10:08 AM
To: Lisa Goodner
Subject: RE: distance foreclosure course for senior judges

1. List the basic requirements for entry of summary judgment in a mortgage foreclosure case.
2. Identify possible affirmative defenses which would preclude the entry of summary judgment in a mortgage foreclosure case.
3. Recognize the unique challenges, including ethical issues, in dealing with pro se litigants in mortgage foreclosure cases.

From: Lisa Goodner
Sent: Tuesday, June 08, 2010 10:00 AM
To: Martha Martin
Subject: RE: distance foreclosure course for senior judges

Will you send me the learning objectives one more time?
thanks

From: Martha Martin
Sent: Tuesday, June 08, 2010 9:52 AM
To: Lisa Goodner
Subject: FW: distance foreclosure course for senior judges
Importance: High

Lisa, before I proceed, I just want to confirm that you are okay with our taping the presentation at circuit, and distributing that via CD/DVD to any senior judges or magistrates who need the education re: foreclosures. If we must still do a DL course, I need to get someone on that. Do you want me to check with Belvin since it was his idea?

From:Martha Martin
Sent: Thursday, June 03, 2010 5:46 PM
To: Martha Martin; Lisa Goodner
Subject: RE: distance foreclosure course for senior judges

I have heard from Jennifer Bailey. She has no objection to the course being video-taped and thinks that is the way we should go. She doesn't particularly want magistrates there at all, as she believes it is too wide a spectrum to teach to, because all the judges will have some experience.

From:Martha Martin
Sent: Thursday, June 03, 2010 3:12 PM
To: Martha Martin; Lisa Goodner
Subject: RE: distance foreclosure course for senior judges

I have spoken with Peter Blanc. He has some real reservations about allowing magistrates to come to the conference, because he believes (and I think he is correct) that these will be new magistrates, not ones who are currently sitting and have had some exposure to judicial branch education. But, he did agree that if the numbers are very low (4-6), that they could come just for the foreclosure course (as opposed to all day). The foreclosure course is at 3:00 – 4:30 p.m. on Tuesday. However, this brings up a question that I hadn't thought about; I thought these would be sitting magistrates and that is apparently not the case. I also question the utility/wisdom of paying their travel, etc. for a 90-minute program. Peter suggested we video-tape it and then distribute the CD to any senior judges not able to attend (he thinks there will be a lot of them, because they are sitting for circuit judges who are at the event) and to the magistrates. I have a call in to J. Bailey to see if she has any objection to video-taping. If we do record it, I think we could get the CDs out to those who needed it fairly quickly if we do not have to make a transcript of the CD (for 508 purposes) which would delay distribution.

I will wait to hear your thoughts, but unless you (or Bailey) object to video-taping and using that as the educational tool, that is the way we'll go since that seems to be Blanc's preference and was the second choice of UPC.

From:Martha Martin
Sent: Tuesday, June 01, 2010 4:01 PM
To: Lisa Goodner
Cc: Martha Martin
Subject: RE: distance foreclosure course for senior judges

I met with Scott Brownell and Mark Shames as co-chairs of Universal Planning on this past Thursday. Their recommendation was to proceed by notifying senior judges (to the extent we have email addresses, and we can also notify all TCAs) of the course at circuit; invite the magistrates who would be interested (and you have said that would just be from the 8th, 11th, 16th and 20th circuits) to attend at least the course on foreclosures, but I don't see any reason they couldn't attend courses all that day, assuming Peter Blanc okays it. They also said their second recommendation was to video-tape the circuit presentation and put it on CD to distribute

to those who couldn't attend and want it, but there would be no CJE just for watching it (consistent with current policy).

I think If we proceed in this manner, it will fairly meet J. Perry's request. Are you okay with this?

From: Charles Francis
To: Perry, Belvin
Date: 3/17/2010 3:06 PM
Subject: Re: FW: Foreclosure Package from DCH, Forum & New Site

I am sure some of your local judges or those in the 11th, 12th, 19th or 20th have seen a lot of the motions filed. Maybe they can assemble us a package. We have had very few contested filings. It does not seem worth buying, and our reuse and distribution of it may be questionable. It might be ok if used only for educational purposes, but I am not a copyright or trademark person.

>>> "Perry, Belvin" <ctjubp1@ocnjcc.org> 3/17/2010 7:33 AM >>>

Belvin Perry, Jr.

From: Documentary Clearing House and Associates
[\[mailto:Documentary_Clearing_House_and_Associates@email.admail.net\]](mailto:Documentary_Clearing_House_and_Associates@email.admail.net)
Sent: Wednesday, March 17, 2010 1:35 AM
To: Perry, Belvin
Subject: Foreclosure Package from DCH, Forum & New Site

DCH now offers a COMPLETE Mortgage Foreclosure Defense Package It will rock the mortgage foreclosure mills!

3-18-10

Dear Belvin,

Empower yourself to become a mortgage defense juggernaut. Use our defense package to strike fear and loathing in the opposition. The new package includes a consolidated motion to dismiss which argues that the mortgage note and mortgage are unenforceable, a complaint form for deed of trust jurisdictions, an explanation of securitization which can be provided as an attachment for the court, three requests for discovery (admissions, interrogatories and production of documents), instructions of how to locate the evidence supportive of legal arguments and affirmative legal defenses to be incorporated as additional counts to an answer.

You will be able to argue and then prove that the plaintiff has no right to enforce the mortgage, the payments alleged to have been in default were paid to certificate holders and the restrictions imposed by the securitization render the mortgage and note unenforceable. Not only will you make arguments not heard before but you will also be able to locate and unearth the buried bodies of evidence the banks do not want you to see. For the first time, you will understand how and why securitization is destructive of the debtor/creditor relationship created by the mortgage. You will be able to show that securitization is not only legally defective but prejudicial to the interest of the mortgage debtor (as well as the secured creditor). You will also show that securitization invades "the four corners" of the document. It corrupts the mortgage and note. You

will be able to show opposing counsel that the bank will incur potential financial liability by proceeding with foreclosure instead of an alternate dispute resolution. In the meanwhile, it is anticipated that the opposition will fight tooth and nail to avoid, limit and defer discovery thereby indefinitely causing the delay of foreclosure.

Please go to our web page:

<http://documentaryclearinghouse.com> (<http://documentaryclearinghouse.com/>)

Our pricing includes unlimited rights to reuse for both single practitioners and law firms. You are also invited to participate in the DCH Forum which provides a site for comment, inquiry, questions, answers and chat for those involved in mortgage foreclosure.

I hope to see you there.

Richard F. Kessler

Documentary Clearing House and Associates, LLC.

4902 Sabal Lake Circle

Sarasota, Florida 34238

941-926-5051

documentaryclearinghouse@gmail.com (<http://documentaryclearinghouse.com/>)

(<http://documentaryclearinghouse.com/>)

Richard F Kessler

(http://documentaryclearinghouse.com/cart/index.php?dispatch=products.view&product_id=29784)

Click here (<http://www.admail.net/mailprefs/1ab3097/2a8436/>) to update your information or stop future mailings.

Documentary Clearing House and Associates

4902 SABAL LAKE CIRCLE

SARASOTA, FL

(<http://www.admail.net/>)

From: Charles Francis
To: Moore, Bart
Date: 9/11/2009 11:37 AM
Subject: Re: FW: FW: Registration Now Open for Tenants' Rights inForeclosuresCourse 10/2/09

Thank you Bart. I will let the judges know.

>>> Bart Moore <mooreb@flcourts.org> 9/11/2009 10:09 AM >>>

Greetings Judge Francis,
There is a Foreclosure distance learning program for Circuit Court judges scheduled for September 30th. The registration information for that course should be going out soon. Although the "target audience" for the Tenants' Rights case is County Court Judges, if there is a Circuit Judge that would like to register for the Tenant's Right course, they should do so. Designating a course as "County" or "Civil" relates to the target audience; although there are some space limitations in some venues. Several of these programs were designed to target various judges to provide some of the education they would have received at the cancelled Circuit and County conferences.

Please do not hesitate to contact me if there are any problems with the registration process.

Sincerely,

Bart O. Moore
Senior Attorney, Court Education
Office of the State Courts Administrator
Supreme Court Building
500 South Duval Street
Tallahassee, Florida 32399
Tel: 850-413-9642 Fax: 850-922-9185

From: Beverly Brown
Sent: Wednesday, September 09, 2009 1:41 PM
To: Judge Charles A. Francis
Cc: Bart Moore
Subject: RE: FW: Registration Now Open for Tenants' Rights in ForeclosuresCourse 10/2/09

Judge Francis,
By copy of this email I am asking Staff Attorney Bart Moore to contact you about the course content.
Beverly

From: Charles Francis [<mailto:FrancisC@leoncountyfl.gov>]
Sent: Wednesday, September 09, 2009 1:28 PM
To: Beverly Brown
Subject: Re: FW: Registration Now Open for Tenants' Rights in ForeclosuresCourse 10/2/09

Why wouldn't Circuit Judges that handle foreclosures that involve tenants need this also? Don't

understand the limitations being placed on some of the announced courses. Being a webcast or video presentation., it can't be a space problem.

>>> Beverly Brown <BrownB@flcourts.org> 9/9/2009 12:08 PM >>>

RFYI - We sent the following email to all county court judges and senior judges this morning. There are a number of senior judges who do not use email so we would appreciate your assistance in notifying senior judges in your circuit of this educational opportunity.

[Tenants' Rights in Foreclosures Videoconference for County Court Judges and Senior Judges](#)

Friday, October 2, 2009

12:15 p.m. - 1:30 p.m. ET

Faculty and Course Content

Broward County Court Judge Jane Fishman will present this timely topic to include the following objectives:

- . Identify the issues facing renters whose homes are in mortgage or association foreclosure;
- . Correctly apply 12 USC Sec. 5220 to ameliorate some of those issues; and
- . Identify issues that may be raised that are not answered by the recent federal legislation.

Location

This course will be offered LIVE from a videoconferencing location at each circuit. Contact your local Court Technology Officer for the location in your circuit.

Continuing Judicial Education Credit (CJE) and Evaluation

A maximum of 1.25 hours of CJE credit for judges is available. Sign in on the form provided at your location. You will receive an email after the course for instructions on completing online CJE and evaluation forms.

How to Register

Space may be limited in some locations so registration is required. Use the password **rent** to register at this link -

<http://www.flcourts.org/UltimateSurvey/Surveys/TakeSurvey.aspx?s=27C0DF85C3A940D1815697CEB9FFE0FD>

The deadline to register is September 25, 2009. If you are a person who needs an accommodation in order to register or participate, please submit your request to Beverly Brown at 850-922-5084 or brownb@flcourts.org.

Contact Information

Bart Moore, Court Education Senior Attorney

850-413-9642 or mooreb@flcourts.org

Website

http://intranet.flcourts.org/osca/Judicial_Education/DistanceLearning/2009TenantsRights/main.html

From: Charles Francis
To: Brown, Beverly
Date: 9/9/2009 1:28 PM
Subject: Re: FW: Registration Now Open for Tenants' Rights in ForeclosuresCourse
10/2/09

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From: Charles Francis
To: Brown, Beverly
Date: 9/9/2009 2:18 PM
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Thank you.

>>> Beverly Brown <BrownB@flcourts.org> 9/9/2009 1:41 PM >>>

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From: Cheri-Ann Granston
To: Francis, Charles
Date: 10/26/2010 1:36 PM
Subject: Re: Fwd: Foreclosure Information

I'm so sorry that it took so long. We had to go through all the previous hearing calendars and Ina had to go through her old emails to get a complete list.

>>> Charles Francis 10/26/2010 1:31 PM >>>
Thank you for the prompt response.

>>> Cheri-Ann Granston 10/26/2010 1:08 PM >>>
Attached is a spreadsheet with case specific information as to all the cancellations made by Plaintiff from August through present.

Thanks

>>> Patricia Moayad 10/25/2010 10:39 AM >>>
Cheri-ann,
Do you have any info on this????

>>> Charles Francis 10/25/2010 10:11 AM >>>
Can you gather what information that we have on cancellations.

From: Charles Francis
To: Hankinson, James
Date: 7/1/2010 9:01 AM
Subject: Re: Fwd: Forms Involving Mortgage Foreclosure Cases

yes. The Supreme Court Ordered these forms statewide about a month ago, and I have been telling the lawyers that no additional or different language may be added.

>>> James Hankinson 6/30/2010 4:22 PM >>>
Do you intend this to apply circuit wide?

>>> Paula Watkins 6/21/2010 4:52 PM >>>
Good afternoon. Judge Francis ask that I inform you the forms listed below must be used in all foreclosure cases effective immediately. Thank you!

Only these forms are to be accepted and used:

- Final Judgment
- Motion to Cancel Foreclosure Sale
- Diligent Search Affidavit

The link to each form is below

http://www.clerk.leon.fl.us/sections/clerk_services/online_forms/foreclosure_real/mot_resch_sale.pdf

http://www.clerk.leon.fl.us/sections/clerk_services/online_forms/foreclosure_real/forclosure_judg.pdf

http://www.clerk.leon.fl.us/sections/clerk_services/online_forms/circuit_civil/aff_dil_search.pdf

From: Charles Francis
To: Rett, Marilyn
Date: 3/11/2010 8:46 AM
Subject: Re: Fwd: Immediate Attention Required - Request for Information

ok. i can handle this with dennis

>>> Marilyn Rett 3/11/2010 7:39 AM >>>

>>> Grant Slayden 3/10/2010 8:00 PM >>>

Marilyn:

Dennis will be available Thursday and Friday, but the pending mortgage foreclosure numbers came directly from each Clerk through Susan. I'll have her available as well.

Thanks,

Grant

Trial Court Administrator
2d Judicial Circuit of Florida
Leon County Courthouse, Suite 225-V
301 South Monroe Street
Tallahassee, Florida 32301
W: 850.577.4420
F: 850.487.7947

>>> Marilyn Rett 03/10/10 5:38 PM >>>

Please have Dennis available tomorrow or Friday. Do not send anything to OSCA until Judge Francis talked to you or Dennis.

>>> Grant Slayden 3/10/2010 3:59 PM >>>

Chief Judge Francis:

The OSCA has been asked to apportion our mortgage foreclosure senior judges by county. By applying the ratio of all pending mortgage foreclosure cases (new and reopened), with a floor of 2 days per county, the following allocations of senior judge days are made:

Franklin County, 400 cases, 6 senior judge days

Gadsden, 483, 7

Jefferson, 77, 2

Leon, 2560, 36

Liberty, 44, 2

Wakulla, 454, 7

If you reduced Jefferson County and Liberty County by one senior judge day each, Leon County would go up by 2 senior judge days.

Please advise if I may send this to the OSCA.

V/r,

Grant Slayden

>>> Sharon Buckingham <buckings@flcourts.org> 9.3.10 4:40 PM >>>

Good Afternoon,

Due to discussions this week between court leadership and the clerks regarding the Economic Recovery Funding Proposal, OSCA staff have been asked to quickly gather some additional information from the circuits as to how our economic recovery resources will be deployed circuit-wide. Court leadership would like to be able to share this information with the clerks so they can plan accordingly.

We have attached the approved LBR request for each circuit (by element and category) and also a table representing the estimated FTE equivalent of the funding request per circuit. We apologize for the short turnaround, but we will need each circuit's response by close of business this Friday, March 12th.

-Using the information contained in the FTE equivalent table, provide the amount of magistrate/senior judge FTE's that will be assigned in each county based on the expected workload from the backlogged cases. Note: Single county circuits can ignore this question.

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

Thank you.

Sharon Buckingham
Senior Court Operations Consultant
Office of the State Courts Administrator
500 South Duval Street
Tallahassee, Florida 32399-1900
(850) 410-1893
(850) 414-1342 (fax)

From: Charles Francis
To: Cherr, Gordon
Date: 2/12/2010 2:54 PM
Subject: Re: maybe you saw this already...

Thanks. Passed it out to all judges on Wednesday.

>>> Gordon Cherr 2/12/2010 2:17 PM >>>

35 Fla. L. Weekly S97b

Rules of Civil Procedure -- Amendments -- General Rules of Pleading -- Verification of mortgage foreclosure complaints involving residential real property -- Forms -- Affidavit of diligent search and inquiry -- Final judgment of foreclosure -- Motion to cancel and reschedule foreclosure sale

IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE. Supreme Court of Florida. Case No. SC09-1460. IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL PROCEDURE - FORM 1.996 (FINAL JUDGMENT OF FORECLOSURE). Case No. SC09-1579. February 11, 2010. Two Cases: Original Proceeding -- Florida Rules of Civil Procedure. Counsel: Mark A. Romance, Chair, Civil Procedure Rules Committee, Miami; Jennifer D. Bailey, Chair, Task Force on Residential Mortgage Foreclosure Cases, Eleventh Judicial Circuit, Miami, Florida and Alan B. Bookman, Task Force on Residential Mortgage Foreclosures, Pensacola; John F. Harkness, Jr., Executive Director, and Madelon Horwich, Bar Staff Liaison, The Florida Bar, Tallahassee, for Petitioners. Henry P. Trawick, Jr., Sarasota; Virginia Townes of Akerman, Senterfitt, Orlando, Florida on behalf of The Florida Bankers Association; Marc A. Ben-Ezra of Ben-Ezra and Katz, P.A., Fort Lauderdale; Carolina A. Lombardi, Marcia K. Cypen, and John W. McLuskey, Legal Services of Greater Miami, Inc., Miami, Kendall Coffey and Jeffrey B. Crockett of Coffey Burlington, LLP, Miami, Randall C. Berg, Jr. and Joshua A. Glickman, Florida Justice Institute, Inc., Miami, and Kent R. Spuhler, Florida Legal Services, Inc., Tallahassee; B. Elaine New, Court Counsel, on behalf of J. Thomas McGrady, Chief Judge, Sixth Judicial Circuit, St. Petersburg; Alice M. Vickers, Florida Legal Services, Inc., Tallahassee, Lynn Drysdale, Jacksonville Area Legal Aid, Inc., Jacksonville, Jeffrey Hearne, Legal Services of Greater Miami, Inc., Miami, and James R. Carr, Florida Rural Legal Services, Inc., Lakeland, on behalf of the Housing Umbrella Group and the Consumer Umbrella Group of Florida Legal Services, Inc.; Scott Manion, Tallahassee, on behalf of Legal Services of North Florida, Inc.; Edward J. Grunewald, Tallahassee, on behalf of The North Florida Center for Equal Justice, Inc.; Thomas H. Bateman, III of Messer, Caparello, and Self, P.A., Tallahassee, and Janet E. Ferris, Tallahassee; Ronald R. Wolfe, Tampa, on behalf of Florida Default Law Group, P.L.; Judge William D. Palmer, Chair, Committee on ADR Rules and Policy, Fifth District Court of Appeal, Daytona Beach, on behalf of the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy; Lisa Epstein, West Palm Beach, Responding with comments.

(PER CURIAM.) In case number SC09-1460, the Task Force on Residential Mortgage Foreclosure Cases has proposed an amendment to Florida Rule of Civil Procedure 1.110 (General Rules of Pleading) and two new Forms for Use with Rules of Civil Procedure. In case number SC09-1579, the Civil Procedure Rules Committee has proposed amendments to form 1.996 (Final Judgment of Foreclosure) of the Forms for Use with Rules of Civil Procedure. We have consolidated these cases for the purposes of this opinion. We have jurisdiction. See art. V, § 2(a), Fla. Const. Case No. SC09-1460

By administrative order on March 27, 2009, the Task Force on Residential Mortgage Foreclosure Cases (Task Force) was "established to recommend to the Supreme Court policies, procedures, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties." In re Task Force on Residential Mortgage Foreclosure Cases, Fla. Admin. Order No. AOSC09-8, at 2 (March 27, 2009) (on file with Clerk of the Florida Supreme Court). The recommendations could "include mediation and other alternate dispute resolution strategies, case management techniques, and approaches to providing pro bono or

low-cost legal assistance to homeowners.” Id. The Task Force was also specifically asked to “examine existing court rules and propose new rules or rule changes that will facilitate early, equitable resolution of residential mortgage foreclosure cases.” Id.

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

<http://www.floridalawweekly.com/newssystem/showfile.php?file=../files/issues/vol35/sco/97b.htm#fn1>)

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

First, rule 1.110(b) is amended to require verification of mortgage foreclosure complaints involving residential real property. The primary purposes of this amendment are (1) to provide incentive for the plaintiff to appropriately investigate and verify its ownership of the note or right to enforce the note and ensure that the allegations in the complaint are accurate; (2) to conserve judicial resources that are currently being wasted on inappropriately pleaded “lost note” counts and inconsistent allegations; (3) to prevent the wasting of judicial resources and harm to defendants resulting from suits brought by plaintiffs not entitled to enforce the note; and (4) to give trial courts greater authority to sanction plaintiffs who make false allegations.

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

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

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

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

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

- (1) That diligent search and inquiry have been made to discover the name and residence of such person, and that the same is set forth in said sworn statement as particularly as is known to the affiant; and
- (2) Whether such person is over or under the age of 18 years, if his or her age is known, or that the person's age is unknown; and

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

(a) Unknown to the affiant; or

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

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

§ 49.041, Fla. Stat. (2009). The form as proposed by the Task Force contains the required information, except for a statement whether the person is over or under the age of eighteen or that the person's age is unknown. Thus, we modify the affidavit form to include this information. Finally, we adopt the Task Force's proposed Motion to Cancel and Reschedule Foreclosure Sale as new form 1.996(b). The Task Force recommended adoption of this new form in which the plaintiff would provide the court with an explanation of why the foreclosure sale needs to be cancelled and request that the court reschedule the sale. As the reason for this proposal, the Task Force stated in its petition:

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

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

Case No. SC09-1579

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

<http://www.floridalawweekly.com/newsystem/showfile.php?file=../files/issues/vol35/sco/97b.htm#fn2>) Upon consideration, we adopt the proposed amendments to form 1.996, with one

exception, as further explained below.

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

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

<http://www.floridalawweekly.com/newsystem/showfile.php?file=../files/issues/vol35/sco/97b.htm>

[#fn3](#)) As noted, these amendments were suggested to the committee by The Florida Bar's Real Property, Probate, and Trust Law Section to improve the form's clarity and readability and better conform to prevailing practices in the courts.

However, one of the changes suggested by the Real Property, Probate, and Trust Law Section and incorporated by the committee into its proposal was the addition of a new paragraph stating that a foreclosure sale shall not begin until a representative of the plaintiff is present and that the plaintiff has the right to cancel the sale upon notice to the clerk. Obviously, including such a provision, as standard, in the final judgment of foreclosure form would be at odds with our adoption of new form 1.996(b) (Motion to Cancel and Reschedule Foreclosure Sale). Accordingly, we decline to adopt this particular amendment. Also, in light of our adoption of the Motion to Cancel and Reschedule Foreclosure Sale as new form 1.996(b), we renumber the Final Judgment of Foreclosure Form as form 1.996(a).

Conclusion

Accordingly, the Florida Rules of Civil Procedure and the Forms for Use with Rules of Civil Procedure are hereby amended as set forth in the appendix to this opinion. New language is underscored; deleted language is struck through. Committee notes are offered for explanation only and are not adopted as an official part of the rules. The amendments shall become effective immediately upon the release of this opinion. Because the amendments to form 1.996(a) (Final Judgment of Foreclosure) were not published by the Court for comment prior to their adoption, interested persons shall have sixty days from the date of this opinion in which to file comments, on those amendments only, with the Court.⁴ (

<http://www.floridalawweekly.com/newsystem/showfile.php?file=../files/issues/vol35/sco/97b.htm#fn4>)

It is so ordered. (QUINCE, C.J., and PARIENTE, LEWIS, LABARGA, and PERRY, JJ., concur. CANADY, J., concurs in part and dissents in part with an opinion, in which POLSTON, J., concurs.)

¹The Task Force also submitted a companion report entitled "Final Report and Recommendations on Residential Mortgage Foreclosure Cases." The report urges the adoption of the proposed rule amendments and also contains administrative recommendations. The main recommendation in the report is the approval of a Model Administrative Order for a managed mediation program for residential mortgage foreclosure actions for use by the chief judges. The report was addressed separately as an administrative matter. The task forces petition also recommended amendments to form 1.997 (Civil Coversheet). However, the civil coversheet was the subject of another case, case number SC08-1141, and the Task Force's proposals with regard to the civil coversheet were addressed in that case. See *In re Amendments to Florida Rules of Civil Procedure -- Management of Cases Involving Complex Litigation*, 34 Fla. L. Weekly S576 (Fla. Oct. 15, 2009).

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

³An explanatory committee note is also added.

⁴An original and nine paper copies of all comments must be filed with the Court on or before April 12, 2010, with a certificate of service verifying that a copy has been served on the Committee Chair, Mark A. Romance, 201 S. Biscayne Blvd, Suite 1000, Miami, FL 33131-4327, as well as separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Committee Chair has until May 3, 2010, to file a response to any comments filed with the Court. Electronic copies of all comments and

responses also must be filed in accordance with the Court's administrative order in In re Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. AOSC04-84 (Sept. 13, 2004).

(CANADY, J., concurring in part and dissenting in part.) Because I am concerned that requiring prior judicial approval for the cancellation of foreclosure sales may produce untoward results, I dissent from the adoption of form 1.996(b). I would have instead adopted the proposal suggested by the Real Property, Probate, and Trust Law Section for the addition of a paragraph to the form final judgment of foreclosure stating that a foreclosure sale shall not begin until a representative of the plaintiff is present and that the plaintiff has the right to cancel the sale upon notice to the clerk. (POLSTON, J., concurs.)

APPENDIX

RULE 1.110. GENERAL RULES OF PLEADING

(a) [no change]

(b) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim, must state a cause of action and shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the ultimate facts showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which the pleader deems himself or herself entitled. Relief in the alternative or of several different types may be demanded. Every complaint shall be considered to demand general relief.

When filing an action for foreclosure of a mortgage on residential real property the complaint shall be verified. When verification of a document is required, the document filed shall include an oath, affirmation, or the following statement:

"Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief."

(c) - (h) [no change]

Committee Notes

[no change]

FORM 1.942. AFFIDAVIT OF DILIGENT SEARCH AND INQUIRY

I, (full legal name) _____ (individually or an Employee of _____), being sworn, certify that the following information is true:

1. I have made diligent search and inquiry to discover the current residence of _____, who is [over 18 years old] [under 18 years old] [age is unknown] (circle one). Refer **to checklist below and identify all actions taken (any additional information included such as the date the action was taken and the person with whom you spoke is helpful) (attach additional sheet if necessary):**

[check all that apply]

_____ Inquiry of Social Security Information

_____ Telephone listings in the last known locations of defendant's residence

_____ Statewide directory assistance search

_____ Internet people finder search {specify sites searched}

_____ Voter Registration in the area where defendant was last known to reside.

_____ Nationwide Masterfile Death Search

_____ Tax Collector's records in area where defendant was last known to reside.

_____ Tax Assessor's records in area where defendant was last known to reside

_____ Department of Motor vehicle records in the state of defendant's last known address

_____ Driver's License records search in the state of defendant's last known address.

_____ Department of Corrections records in the state of defendant's last known address.

From: Charles Francis
To: Haworth, Lee
Date: 8/13/2010 10:18 AM
Subject: RE: Mediation Program Form A

Helps a lot. Thanks Lee. I like the 10 day show cause order. I also agree that this should be a program manager issue or concern.

>>> "Lee Haworth" <LHaworth@jud12.flcourts.org> 8/12/2010 2:15 PM >>>

Good question. There is an order to show cause, which should be triggered by the program manager and sent by him to the court when he sees non-compliance. It can be found in the Exhibits approved by the S Ct. in its MAO. (See MAO Ex 11 and 12.) These contemplate a hearing. I don't want to waste time with a hearing so we have devised our own form (attached) that gives 10 days to file Form A or we dismiss sua sponte.

The biggest problem is detecting when the property is a homestead. If the P is careless or intentionally ducking the AO and not filing Form A, normally these will slide through undetected. But I see this a primarily as an issue for the Program Manager. They are losing money on each one that gets by.

We don't have a good way in house to police Form A compliance. i.e., ck descriptions in the complaint versus tax assessor's homestead records. Not enough case managers on our side and clerks can't do it. If we discover the issue at the back end, I would suggest the line judges dismiss w/o prejudice, as the D has been deprived of participating in a supreme court mandated mediation program. Although, some judges might opt for better-late-than-never mediation. Hope this helps.

From: Charles Francis [<mailto:FrancisC@leoncountyfl.gov>]
Sent: Wednesday, August 11, 2010 1:34 PM
To: Lee Haworth
Subject: Mediation Program Form A

Lee:

You stay on top of this as well as anyone.

How do you enforce the filing of the Form A with the mortgage foreclosure complaint required by the AO? Do you use a "file with ___ days or the complaint is dismissed without prejudice" or what?

No rush, but I figured I shouldn't recreate the wheel!

From: Charles Francis
To: Howells, Debbie
Date: 3/1/2010 3:00 PM
Subject: Re: Mortgage Foreclosure Administrative Orders

We are developing the program now and will provide all info upon entry of the final AO

>>> Debbie Howells <howellsd@flcourts.org> 3/1/2010 2:35 PM >>>

Good afternoon. We are receiving many inquiries about the administrative orders to implement managed mediation in mortgage foreclosure cases that involve homestead property. Once your circuit's order has been entered and posted on your website, could you please send us information so we can link to those orders from the Florida Courts and Supreme Court of Florida websites?

Respectfully,

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

From: Charles Francis
To: Slayden, Grant
Date: 10/4/2010 9:03 AM
Subject: Re: NYT's Article: Flawed Paperwork Aggravates a Foreclosure Crisis

I had read these. Met with the nation VP from Fannie Mae last week and he had advised me that these stories were causing serious repercussions, especially with Congress.

>>> Grant Slayden 10/4/2010 8:06 AM >>>

Tonya:

Please send this interesting article to our mortgage foreclosure judges. It quotes the Chief Judge from the 12th Judicial Circuit.

Thanks,

Grant

Flawed Paperwork Aggravates a Foreclosure Crisis

By GRETCHEN MORGENSON (

http://topics.nytimes.com/top/reference/timestopics/people/m/gretchen_morgenson/index.html?inline=nyt-per)Published: October 3, 2010

Jay LaPrete/Associated Press

Jennifer Brunner, the secretary of state of Ohio, has highlighted examples of what her office considers possible notary abuse.

The flawed practices that GMAC (

<http://topics.nytimes.com/top/news/business/companies/gmac-llc/index.html?inline=nyt-org>)

Mortgage (<http://topics.nytimes.com/your-money/loans/mortgages/index.html?inline=nyt-classifier>), JPMorgan Chase (

http://topics.nytimes.com/top/news/business/companies/morgan_j_p_chase_and_company/index.html?inline=nyt-org) and Bank of America (

http://topics.nytimes.com/top/news/business/companies/bank_of_america_corporation/index.html?inline=nyt-org) have recently begun investigating are so prevalent, lawyers and legal experts say, that additional lenders and loan ([http://topics.nytimes.com/your-](http://topics.nytimes.com/your-money/loans/index.html?inline=nyt-classifier)

[money/loans/index.html?inline=nyt-classifier](http://topics.nytimes.com/your-money/loans/index.html?inline=nyt-classifier)) servicers are likely to halt foreclosure proceedings and may have to reconsider past evictions.

Problems emerging in courts across the nation are varied but all involve documents that must be submitted before foreclosures can proceed legally. Homeowners, lawyers and analysts have been citing such problems for the last few years, but it appears to have reached such intensity recently that banks (<http://topics.nytimes.com/your-money/investments/brokerage-and-bank-accounts/index.html?inline=nyt-classifier>) are beginning to re-examine whether all of the foreclosure papers were prepared properly.

In some cases, documents have been signed by employees who say they have not verified crucial information like amounts owed by borrowers. Other problems involve questionable legal notarization of documents, in which, for example, the notarizations predate the actual preparation of documents — suggesting that signatures were never actually reviewed by a notary.

Other problems occurred when notarizations took place so far from where the documents were signed that it was highly unlikely that the notaries witnessed the signings, as the law requires. On still other important documents, a single official's name is signed in such radically different ways that some appear to be forgeries. Additional problems have emerged when multiple banks have all argued that they have the right to foreclose on the same property, a result of a murky trail of documentation and ownership.

There is no doubt that the enormous increase in foreclosures in recent years has strained the resources of lenders and their legal representatives, creating challenges that any institution might

find overwhelming. According to the Mortgage Bankers Association, the percentage of loans that were delinquent by 90 days or more stood at 9.5 percent in the first quarter of 2010, up from 4 percent in the same period of 2008.

But analysts say that the wave of defaults still does not excuse lenders' failures to meet their legal obligations before trying to remove defaulting borrowers from their homes.

"It reflects the hubris that as long as the money was going through the pipeline, these companies didn't really have to make sure the documents were in order," said Kathleen C. Engel, dean for intellectual life at Suffolk University Law School and an expert in mortgage law. "Suddenly they have a lot at stake, and playing fast and loose is going to be more costly than it was in the past." Attorneys general in at least six states, including Massachusetts, Iowa, Florida and Illinois, are investigating improper foreclosure practices. Last week, Jennifer Brunner, the secretary of state of Ohio, referred examples of what her office considers possible notary abuse by Chase Home Mortgage to federal prosecutors for investigation.

The implications are not yet clear for borrowers who have been evicted from their homes as a result of improper filings. But legal experts say that courts may impose sanctions on lenders or their representatives or may force banks to pay borrowers' legal costs in these cases.

Judges may dismiss the foreclosures altogether, barring lenders from refiling and awarding the home to the borrower. That would create a loss for the lender or investor holding the note underlying the property. Almost certainly, lawyers say, lawsuits on behalf of borrowers will multiply.

In Florida, problems with foreclosure cases are especially acute. A recent sample of foreclosure cases in the 12th Judicial Circuit of Florida showed that 20 percent of those set for summary judgment involved deficient documents, according to Chief Judge Lee E. Haworth.

"We have sent repeated notices to law firms saying, 'You are not following the rules, and if you don't clean up your act, we are going to impose sanctions on you,' " Mr. Haworth said in an interview. "They say, 'We'll fix it, we'll fix it, we'll fix it.' But they don't."

As a result, Mr. Haworth said, on Sept. 17, Harry Rapkin, a judge overseeing foreclosures in the district, dismissed 61 foreclosure cases. The plaintiffs can refile but they need to pay new filing fees, Mr. Haworth said.

The byzantine mortgage securitization process that helped inflate the housing bubble allowed home loans to change hands so many times before they were eventually pooled and sold to investors that it is now extremely difficult to track exactly which lenders have claims to a home. Many lenders or loan servicers that begin the foreclosure process after a borrower defaults do not produce documentation proving that they have the legal right to foreclosure, known as standing.

As a substitute, the banks usually present affidavits attesting to ownership of the note signed by an employee of a legal services firm acting as an agent for the lender or loan servicer. Such affidavits allow foreclosures to proceed, but because they are often dubiously prepared, many questions have arisen about their validity.

Although lawyers for troubled borrowers have contended for years that banks in many cases have not properly documented their rights to foreclose, the issue erupted in mid-September when GMAC said it was halting foreclosure proceedings in 23 states because of problems with its legal practices. The move by GMAC followed testimony by an employee who signed affidavits for the lender; he said that he executed 400 of them each day without reading them or verifying that the information in them was correct.

JPMorgan Chase and Bank of America followed with similar announcements.

But these three large lenders are not the only companies employing people who have failed to verify crucial aspects of a foreclosure case, court documents show.

Last May, Herman John Kennerty, a loan administration manager in the default document group of Wells Fargo (

http://topics.nytimes.com/top/news/business/companies/wells_fargo_and_company/index.html?inline=nyt-org) Mortgage, testified to lawyers representing a troubled borrower that he typically signed 50 to 150 foreclosure documents a day. In that case, in King County Superior Court in

Seattle, he also stated that he did not independently verify the information to which he was attesting.

Wells Fargo did not respond to requests for comment.

In other cases, judges are finding that banks' claims of standing in a foreclosure case can conflict with other evidence.

Last Thursday, Paul F. Isaacs, a judge in Bourbon County Circuit Court in Kentucky, reversed a ruling he had made in August giving [Bank of New York Mellon](#) (http://topics.nytimes.com/top/news/business/companies/bank_of_new_york_company/index.html?inline=nyt-org) the right to foreclose on a couple's home. According to court filings, Mr. Isaacs had relied on the bank's documentation that it said showed it held the note underlying the property in a trust. But after the borrowers supplied evidence indicating that the note may in fact reside in a different trust, the judge reversed himself. The court will revisit the matter soon. Bank of New York said it was reviewing the ruling and could not comment.

Another problematic case involves a foreclosure action taken by [Deutsche Bank](#) (http://topics.nytimes.com/top/news/business/companies/deutsche_bank_ag/index.html?inline=nyt-org) against a borrower in the Bronx in New York. The bank says it has the right to foreclose because the mortgage was assigned to it on Oct. 15, 2009.

But according to court filings made by David B. Shaev, a lawyer at Shaev & Fleischman who represents the borrower, the assignment to Deutsche Bank is riddled with problems. First, the company that Deutsche said had assigned it the mortgage, the Sand Canyon Corporation, no longer had any rights to the underlying property when the transfer was supposed to have occurred.

Additional questions have arisen over the signature verifying an assignment of the mortgage. Court documents show that Tywana Thomas, assistant vice president of [American Home Mortgage](#) (http://topics.nytimes.com/top/news/business/companies/american_home_mortgage_investment_corporation/index.html?inline=nyt-org) Servicing, assigned the mortgage from Sand Canyon to Deutsche Bank in October 2009. On assignments of mortgages in other cases, Ms. Thomas's signatures differ so wildly that it appears that three people signed the documents using Ms. Thomas's name.

Given the differences in the signatures, Mr. Shaev filed court papers last July contending that the assignment is a sham, "prepared to create an appearance of a creditor as a real party in interest/standing, when in fact it is likely that the chain of title required in these matters was not performed, lost or both."

Mr. Shaev also asked the judge overseeing the case, Shelley C. Chapman, to order Ms. Thomas to appear to answer questions the lawyer has raised.

John Gallagher, a spokesman for Deutsche Bank, which is trustee for the securitization that holds the note in this case, said companies servicing mortgage loans engaged the law firms that oversee foreclosure proceedings. "Loan servicers are obligated to adhere to all legal requirements," he said, "and Deutsche Bank, as trustee, has consistently informed servicers that they are required to execute these actions in a proper and timely manner."

Reached by phone on Saturday, Ms. Thomas declined to comment.

The United States Trustee, a unit of the Justice Department, is also weighing in on dubious court documents filed by lenders. Last January, it supported a request by Silvia Nuer, a borrower in foreclosure in the Bronx, for sanctions against JPMorgan Chase.

In testimony, a lawyer for Chase conceded that a law firm that had previously represented the bank, the Steven J. Baum firm of Buffalo, had filed inaccurate documents as it sought to take over the property from Ms. Nuer.

The Chase lawyer told a judge last January that his predecessors had combed through the chain of title on the property and could not find a proper assignment. The firm found "something didn't happen that needed to be fixed," he explained, and then, according to court documents, it prepared inaccurate documents to fill in the gaps.

The Baum firm did not return calls to comment.

A lawyer for the United States Trustee said that the Nuer case "does not represent an isolated example of misconduct by Chase in the Southern District of New York."
Chase declined to comment.

"The servicers have it in their control to get the right documents and do this properly, but it is so much cheaper to run it through a foreclosure mill," said Linda M. Tirelli, a lawyer in White Plains who represents Ms. Nuer in the case against Chase. "This is not about getting a free house for my client. It's about a level playing field. If I submitted false documents like this to the court, I'd have my license handed to me."

From: David Wolfson
To: Francis, Charles
Date: 10/4/2010 12:47 PM
Subject: Re: Proposed AO
Attachments: Wolfson version Administrative Order 10-09.doc

Its attached, your Honor

>>> Charles Francis 10/3/2010 1:37 PM >>>
Please send me you electronic document. I do have changes.

From: Charles Francis
To: Wilson, Susan
Date: 7/13/2010 8:21 AM
Subject: Re: Questions Regarding Mortgage Foreclosure Program

I am here this morning. Come by and see me about this.

>>> Susan Wilson 7/12/2010 5:18 PM >>>
Judge Francis,

Patricia Moayad, David Wolfson and I met last week on the mortgage foreclosure program and we had a few questions. I didn't know if you wanted to meet on this or handled by email; our questions follow:

1. What cases are included: cases referred from TBA (all contested?), all residential, commercial, backlog, etc.?
2. Are overnight travel expenses allowed? (may be moot point; if case managers go a few days prior to rocket docket, and on rocket docket days) If overnight travel is not allow, can court be set to start at 10:00 AM?
3. What are the mandatory reporting requirements? Are there other reporting requirements. We plan to set up a tracking spreadsheet and want to make sure we include all needed data elements.

Also, we assumed that the AAI would prepare the dockets and pull the files; so please let us know if we assumed incorrectly.

Thank you,
Susan

From: Charles Francis
To: Bailey, Gypsy
CC: Bauman, Sene
Date: 6/11/2010 8:40 AM
Subject: Re: Residential mortgage foreclosure cases AO

Great job! Thank you and Sene.

>>> Gypsy Bailey 6/11/2010 12:28 AM >>>

Judge, it's all done. Please look under the Judicial tab on the Judicial Website. Go down to Reports & Statistics, Circuit Civil, CA Foreclosure Case Tracking. In addition to the totals you requested, Sene added a LOT of functionality that likely will assist the foreclosure case managers that will be coming on board soon.

Sene said he'll give you a call tomorrow to see if he can run up to show you all of the functions of this report. I hope it meets your needs.

>>> Charles Francis 6/10/2010 10:08 AM >>>

If you would isolate, it would be appreciated. I doubt if any of us could move anything to excel.

>>> Gypsy Bailey 6/9/2010 2:28 PM >>>

Thanks for meeting with me and Dana today - we appreciate all of the information.

I talked with Sene about your desire to see mortgage foreclosure totals and he asked me to show you a report we use on the Clerk tab. Instead of using the Case Activity report which will show you workload (and includes reopens), Sene thought you might want to see caseload totals by month.

I have attached some screen shots that will show you the judicial website report our office uses. It's a report that allows us to see monthly the new cases filed, by action code. Once pulled, the data can be sorted by the action code column so that you can see the mortgage foreclosure breakouts, can export into Excel, and can total in Excel.

Sene can limit the report just to mortgage foreclosure totals, if you'd like, and locate that report on the judicial tab on the website. Please let me know if that is what you would like. Thanks.

>>> Charles Francis 6/8/2010 5:35 PM >>>

I think so but my calendar (Marilyn) is gone. I will check first thing in the morning.

>>> Gypsy Bailey 6/8/2010 5:30 PM >>>

Debbie is on vacation this week, but I am open tomorrow morning - are you available around 10 am? I'll be happy to come up, thanks.

>>> Charles Francis 6/8/2010 5:28 PM >>>

If you and/or Debbie have a minute tomorrow, please stop by and let me tell you where we are and what I anticipate will unfold once the people and program is in place. I think that I have a pretty open schedule but email Marilyn and if I am free come on down.

>>> Gypsy Bailey 6/2/2010 8:28 AM >>>

Thanks for providing details about the above on 5/21.

Debbie Kennedy and I had a very positive meeting with Marianne Bryant yesterday. She seems

pleased that we have Form A and the notice form on our website; there will be a notice about the AO and forms on our website sometime this week; there are notices on our counters; and we have placed notices in all of the attorney pickup boxes. While we had no such filings yesterday, we are prepared to attach the notice to all summons we issue in these cases. Further, Sene has designed a judicial website report for Marianne to use, so she can identify those cases in which a Form A has not been filed; she seems pleased with it, but we told her we will evolve with her over time to make the report all she needs it to be. She doesn't think she'll need to use files for her functions, but we may need to build this function for the case managers you'll be hiring in July. Debbie and I look forward to meeting with them so we can assist with their needs.

I chatted with my court attendance supervisors, and learned that, once you are ready to set hearings pursuant to your AO, we can cover them on Mondays, Thursdays, and Fridays, preferably in the mornings. Please let me know if this will work, and we will be happy to work with you/court admin in getting these hearings scheduled.

Thanks again.

From: Charles Francis
To: Wilson, Susan
Date: 6/17/2010 1:35 PM
Subject: Re: Residential Mortgage Foreclosure Status Update

Thank you. We'll get there.

>>> Susan Wilson 6/17/2010 12:41 PM >>>

This is an update on the progress of the Residential Mortgage Foreclosure project.

Mediation - Dave reports that the TBA program is up and running and we are waiting for our first case.

Budget - Dennis revised the budget to reflect changes in the number of hours allocated to the three law clerks/case managers. Two of the three positions will be allocated 24 hours per week, and the third position will be allocated nine hours.

Technology - Danny met with Pat Curtis on this, and has ordered two desktop computers for the law clerks/case managers. Telephones are pending.

Offices - Bill reports that the senior judges and AAI will be located in 301 A & B; the law clerks/case managers will be in 301 G, H and I. Furniture is in place though one office has extra furniture and boxes that needs to be removed.

Badges - Bill will secure for applicable positions.

Positions - Senior Judges will be Gary, Parsons and Cole. Paula advises thta Justin has been confirmed as case manager, and we will be contacting Matt and Isis for the other case manager positions. The AAI is being advertised with a closing date of June 30.

Senior Judge Training - Tonya reports that JudgeShelfer willtrain Judge Parsons.

Thank you,
Susan

From: David Wolfson
To: Vance, Kelly
CC: Francis, Charles
Date: 11/1/2010 11:02 AM
Subject: Re: Thursday 11/4 hearings

I hesitate to tell the Division Judges anything. The policy has been if the Motion to Cancel hasn't been called up prior to the hearing, it is denied. If they don't show up, it is a no- show.

RESIDENTIAL MORTGAGE FORECLOSURE MEDIATION PROGRAM

Second Judicial Circuit

REPORT ON RMFM PROGRAM

August 11, 2010

Homestead Foreclosures Received since June 1, 2010 (i.e., ordered, voluntarily sent from Lender's counsel, or automatically part of RMFMP per AO 10-05)	246
Borrowers sent initial letter from Program Manager	196
Borrowers sent to Financial Counseling	23
Borrowers who have completed Financial Counseling	2
Borrowers who will be ready for mediation upon turning in all documents to FC	7
Returned Mail unable to Deliver or Declined Participation	9
Pending Borrower Acceptances	6