

court.³ 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.

3. An explanatory committee note is also added.

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

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).

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.

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, Suzanne Barto Hill of Rumberger, Kirk and Caldwell, Orlando, Florida, and Roy A. Diaz of Smith, Hiatt and Diaz, P.A., Fort Lauderdale, 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, and Terry Resk of Haile, Shaw and Pfaffenberger, P.A., North 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 1.924. 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: _____

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	.....
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 ~~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 4, 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~~, 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.



From: John Fenno **Sent:** Mon, 29 Sep 2008 03:58:48 GMT
To: Judge Terrell
Subject: Seats Still Left - National Foreclosure Defense Expert Presents Two Day CLE Training in Pensacola Oct 9 and 10

REMINDER to RESERVE YOUR SLOT NOW -- SOME SEATS STILL LEFT -- PRE-REGISTRATION ENDS OCT 6.

**FORECLOSURE DEFENSE IN FLORIDA
 FEATURING APRIL CHARNEY**

*(NATIONAL EXPERT ON FORECLOSURE DEFENSE)
 (A CLE LEGAL ADVOCACY TRAINING)*

Thursday and Friday, October 9 and 10, 2008

*M.C. BLANCHARD JUDICIAL CENTER
 ESCAMBIA COUNTY COURTHOUSE
 JURY ASSEMBLY ROOM*

*190 Governmental Center
 Pensacola, Florida*

Thursday Seminar 8:00 a.m. to 5:00 p.m.

Friday Seminar 8:00 a.m. to 4:30 p.m.

*Presented by
 The Escambia Santa Rosa Bar Association
 &
 Legal Services of North Florida, Inc.*

16.0 CLE Credits Applied for including 2.0 in Ethics

PRE-REGISTER HERE

WHAT

Defending Foreclosures in Florida
 (A TWO DAY LONG SEMINAR)

WHEN

Thursday, October 9, 2008
 8:00 a.m. - 5:00 p.m. (Sign-in at 8:00 a.m.)
 (LUNCH ON YOUR OWN)
 Friday, October 10, 2008
 8:00 a.m. - 4:30 p.m. (Sign-in at 8:00 a.m.)
 (LUNCH ON YOUR OWN)

WHERE

M.C. Blanchard Judicial Center
 Escambia County Courthouse Jury Assembly Room
 190 Governmental Center

PRESENTER

April Charney, Senior Attorney
 Jacksonville Area Legal Aid, Inc.

CLE TOPICS

- Defending Foreclosures in Florida
- Federal Laws that Govern Mortgage Origination and Servicing
- Laws and Regulations that Govern Mortgage Lending and Servicing
- Understanding Loan Documents, Origination and

Pensacola, Florida

RESERVATIONS

Space is Limited
Advanced Reservations Required

ADMISSION COST

- \$150 Two Days
- \$100 One Day (Thurs. or Fri.)

Closing Process

- Post-Origination issues - Servicing Problems
- Common Law/State Law Causes of Action and Affirmative Defense
- Drafting/Discovery/Motion Practice

AGENDA ([click here](#))

ONLINE PAYMENT

([CLICK HERE](#))

A PAYMENT CONFIRMATION EMAIL WILL BE SENT OUT FOR EACH ADMISSION FEE RECEIVED.

CASH PAYMENT

CHECK(S) NEED TO BE RECIEVED BY OCTOBER 6TH

Make check payable to:
Legal Services of North Florida, Inc.
c/o John J. Fenno
2119 Delta Blvd.
Tallahassee, FL 32303

Any questions contact John Fenno by email at john@lsnf.org

or call (850) 385-9007 Ex. 1006

Legal Services of North Florida

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Email Marketing by



Legal Services of North Florida | 2119 Delta Blvd. | Tallahassee | FL | 32303



From: [Robin Wright](#) **Sent:** Thu, 04 Jun 2009 07:54:55 GMT
To: [ESC-Judges](#); [OKA-Judges](#); [SRA-Judges](#); [WAL-Judges](#);
CC: [Kerl Igney](#); [ESC-JA's](#); [OKA-JA's](#); [SRA-JA's](#); [WAL-JA's](#);
Subject: FW: Mortgage Foreclosure Task Force Survey for Judges

Judges,

Please take a few minutes and complete the survey regarding Foreclosures. This survey was created by the Supreme Court Task Force on Foreclosures.

Thanks,

Robin

From: Sharon Press [mailto:presss@flcourts.org]
Sent: Wednesday, June 03, 2009 10:31 AM
To: Robin Wright
Subject: Mortgage Foreclosure Task Force Survey for Judges

Dear Colleagues:

The Supreme Court Task Force on Foreclosures has designed a survey for judges to try to capture the problems we are all experiencing. You can access the survey at <http://intranet.flcourts.org/> and look right below the masthead and you will see it. This is the chance to make your complaints heard, please fill it out!

Jennifer D. Bailey

Chair, Supreme Court Residential Mortgage Foreclosure Task Force
Administrative Judge, Civil Division
11th Judicial Circuit
Miami-Dade County Courthouse
73 W. Flagler St. , Room 1307
Miami , FL 33130
(305) 349-7152



From: The Florida Bar **Sent:** Wed, 13 May 2009 21:36:43 GMT
To: Judge Terrell
Subject: The Florida Supreme Court's Residential Mortgage Foreclosure Task Force - Residential Mortgage Foreclosure Surveys

Florida Bar Members, here is an opportunity to have your voice heard on foreclosures:

The Florida Supreme Court's Residential Mortgage Foreclosure Task Force is offering you and your clients a chance to be heard. The Task Force has online surveys about mortgage foreclosure cases for borrowers, lawyers and lenders/holders at http://www.flcourts.org/gen_public/adr/index.shtml. The borrowers survey is available in English, Spanish and Creole. Please help the Task Force identify the best solutions to this explosion of cases in our court system. Go online and answer the attorney survey, and encourage your clients to go online and answer the borrower or lender/holder survey. Send it out by email to everyone who might have an opinion.

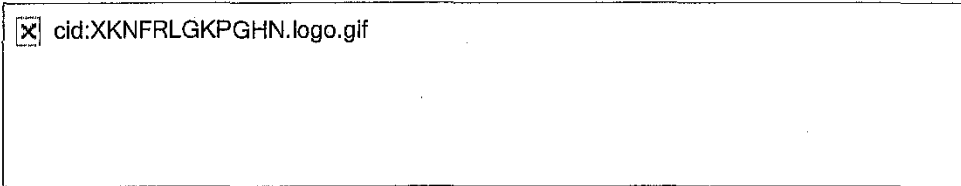
Please be heard on these important issues. The Task Force wants to create real solutions to real problems. Help the Task Force by answering these surveys. Respond today - time is of the essence!



From: [Tom Bateman](#) **Sent:** Wed, 19 Aug 2009 07:09:35 GMT
To: [Roderick Petrey](#); [Gloria Massey](#); [Ned Pope](#); [Chris Bailey](#);
CC: [Judge Terrell](#); [Jennifer Bailey](#); [Burton Conner](#);
Subject: RE: Order on Plaintiff's Verified Emergency Motion to Cancel Mediation and Return Fee

[ATT789858.gif \(6Kb\)](#)

Now that the Mortgage Foreclosure Task Force has made its recommendations to the FSC, I think it is fairly unlikely that the bench will allow the plaintiff's bar to push back to that extent. I'm already hearing that the rank and file judiciary around the state want to get programs started in their circuits as soon as humanly possible.



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

Direct Phone: (850) 553-3453
 Office Phone: (850) 222-0720
 Direct Fax: (850) 558-0674
 Office Fax: (850) 224-4359
 Cell: (850) 545-0445

Email: tbateman@lawfla.com
 Web: www.lawfla.com

> > > "Roderick Petrey" <rpetry@collinscenter.org> Tuesday, August 18, 2009 9:05 PM > > >
 Although the Collins Center must obey a judge's order, the Collins Center does NOT have to agree to continue to administer a system with such obvious defects. If this kind of situation occurs more than occasionally, the Collins Center will have to consider withdrawing. Those are the orders I have from our Board and with which I fully concur.
 Rod

From: Tom Bateman [<mailto:TBateman@lawfla.com>]
 Sent: Tue 8/18/2009 6:27 PM
 To: Chris Bailey; Gloria Massey; Ned Pope; Roderick Petrey
 Cc: Judge.Terrell@FLCOURTS1.GOV
 Subject: RE: Order on Plaintiff's Verified Emergency Motion to Cancel Mediation and Return Fee

They've tried it in the 19th but Judge Conner was on to them, I think, and only ordered return of part of the fee.
 Judge Bailey hasn't mentioned it but there is already something in the 11th's A/O covering it.

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Email: tbateman@lawfla.com
Web: www.lawfla.com

> > > "Gloria Massey" <GMassey@collinscenter.org > Tuesday, August 18, 2009 6:16 PM > > >

Tom,

I anticipate Default will file like orders in the 19th and 11th circuits.

Gloria Massey
Collins Center for Public Policy
2630 Centennial Place, Suite 2
Tallahassee, FL 32308

Ph: 850/219-0082 x102

Fax: 850/219-0491

From: Tom Bateman [mailto:TBateman@lawfla.com]
Sent: Tuesday, August 18, 2009 5:59 PM
To: Chris Bailey; Gloria Massey; Ned Pope; Roderick Petrey
Cc: Judge.Terrell@FLCOURTS1.GOV
Subject: Re: Order on Plaintiff's Verified Emergency Motion to Cancel Mediation and Return Fee

Gloria:

I understand the frustration given the terms of the Administrative Order and how much time, effort and money the Collins Center has expended in getting the case to mediation just to have the plaintiff's lawyer unilaterally pull something like that with the judge who may not realize all of the nuances - especially that the other party did not want to cancel the mediation session. Most likely, the plaintiff's attorney wouldn't have been able to do something like that if the defendant/borrower was represented by an attorney. Even so, while we may not agree that the plaintiff should be due any money because the mediation was not timely canceled and the mediator and financial counselor have to be paid, there is only one answer to your question: The Collins Center must obey the judge's order - no matter what it says.

I have copied Chief Judge Terrell with this reply so that he is aware what is happening and so he might consider alerting the other judges in the circuit to this problem that could escalate rapidly if the attorneys are not deterred.

Thomas H. Bateman III
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Direct Fax: (850) 558-0674
Office Fax: (850) 224-4359

Cell: (850) 545-0445

Email: tbateman@lawfla.com

Web: www.lawfla.com

> > > "Gloria Massey" <GMassey@collinscenter.org > Tuesday, August 18, 2009 4:03 PM > > >

We are scheduling mediations based on the A/Os. Once mediation is scheduled, we do not cancel unless the borrower agrees to do so.

Specific to Clifford Ruden v HSBC Bank USA - 1st Circuit --

Today, we received an Order on Plaintiff's Verified Emergency Motion to Cancel Mediation and Return Fee signed by Judge LaPorte in the 1st Circuit. Mediation was scheduled, Default then asked us to cancel because they were working on a short sale, borrower did not want to cancel, wanted to use mediation to iron details out. CSR notes below (from database) are self-explanatory.

As a result of the order signed by the judge, mediation was canceled within 5 day window -- mediator will be paid \$350. Counseling agency will be paid \$25. Judge is granting plaintiff's motion to return fee.

How to handle?

8/12/2009 5:04:38 PM

Sharon Benningfield

Emmanuel rec'd Emergency Motion to Cancel and Refund Fee on 8/11 and emailed to us. A copy is being filed with the original form A.

8/4/2009 8:57:29 AM

Malissa Counts

LVM for Mr. Ruden. I explained that they wanted to reschedule in regards to the closing date and that if he wanted to reschedule to call me today otherwise I knew he didn't want to reschedule and to keep original apt.

8/4/2009 8:54:53 AM

Malissa Counts

Karen at Default called and wanted to see if we could reschedule for after the mediation. I told her that when he called he mentioned that he wanted to have the mediation to get everything ironed out prior to the short sale closing date.

8/3/2009 4:37:33 PM

Malissa Counts

called Karen at default and notified her that the mediation is not cancelled and will proceed with mediation.

8/3/2009 4:36:19 PM

Malissa Counts

borrower called and stated that he has not rec'd everything he wants, so he still wants mediation.

8/3/2009 10:07:10 AM

Malissa Counts

karen with default called in regards to cancellation because of short sale.

7/31/2009 10:35:37 AM

Malissa Counts

LVM for borrower to call be back in regards to cancelling mediation for short sale.

7/31/2009 10:11:53 AM

Malissa Counts

Karen called and short sale closing date is 8/27. Informed her that we would mark it cancel reschedule incase closing date is missed.

7/22/2009 1:37:56 PM

Malissa Counts

recd call from karen at Default in regards to rescheduling as they have two case scheduled for that day and time. I am trying to get the borrower to reschedule for 2:30. LVM for borrower to call me back.

7/16/2009 2:05:17 PM

Malissa Counts

sent email to: DResolution@defaultlawfl.com, default.resolution@defaultlawfl.com,

7/16/2009 2:02:51 PM

Malissa Counts

Mr. Ruden called and scheduled apt for mediation because they will not approve the short sale offer and the buyer is ready to walk from the offer. Set mediation 8/12/09, 12pm. Sent confirmation email to: jkuyk@defaultlawfl.com

7/16/2009 11:23:18 AM

Nathalie Pierre

lvm

7/9/2009 11:42:08 AM

Nathalie Pierre

Postcard returned: Not deliverable as addressed.

Gloria Massey

Collins Center for Public Policy

2630 Centennial Place, Suite 2

Tallahassee, FL 32308

Ph: 850/219-0082 x102

Fax: 850/219-0491



From: [Tom Bateman](#) **Sent:** Tue, 01 Sep 2009 08:32:35 GMT
To: [Tom Bateman](#)
Subject: Judge Has Had It With Foreclosure Mill Attorneys Appearing By Telephone

While I don't condone what Daytona Circuit Judge Doyle said (**IF** he actually said what was reported), the story illustrates one of the major problems with these cases ... the law firms are being paid a flat fee of \$1200-1400/case to get a judgment. If the Mortgage Foreclosure Task Force report is accurate, one firm has 50,000 cases statewide and is being paid \$60-70 million dollars to file and ram the cases through the court system. The law firms' claim that they can't appear at mediations or court hearings due to the number of cases they have in the law firm is mighty shallow - dare I say, disingenuous.

<http://www.news-journalonline.com/NewsJournalOnline/News/Headlines/frtHEAD03090109.htm>

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company's customers without independently evaluating the objectives of the individual clients.

Mullaney recognized, according to the court, that counseling debtors in financial crisis as to their best course of legal action requires the attention of a qualified attorney. Foreclosure Solutions, the court said, implemented a one-size-fits-all plan to protect customers' legal interests when the company did not have a lawyer's qualifications and training and did not have to obey the professional conduct standards that lawyers must follow.

Ohio cases have repeatedly held that nonlawyers engage in the unauthorized practice of law by attempting to represent the legal interests of others and to advise them of the legal rights during settlement negotiations, the court said. **Precedent establishes that it is unauthorized practice for nonlawyers to advise debtors of their legal rights and the terms and conditions of settlement in negotiations to avoid pending foreclosure or other collection proceedings**, according to the court.

Nonlawyers may not insulate themselves from unauthorized practice charges, it added, by persuading customers to execute a power of attorney or informing them that the nonlawyer is not an attorney and therefore is incapable of giving legal advice.

In a footnote, **the court acknowledged a distinction between providing financial advice in the course of credit counseling, which nonlawyers may do, and advising debtors about their best legal remedy in the face of foreclosure proceedings, which is the exclusive domain of attorneys**. Drawing a clearer line between the two categories of activities must await a case in which the factual record and legal arguments on the question are more developed, the court stated.

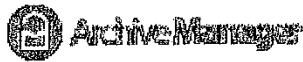
Injunction, Civil Penalty

The court enjoined Buckley and Foreclosure Solutions from further unauthorized practice, including attempts to represent the legal interests of others or to provide advice about how to negotiate a settlement of pending foreclosure proceedings.

Although the bar association urged the court to make Foreclosure Solutions disgorge all the money that it obtained in the course of the unauthorized practice, the court accepted the UPL board's recommendation that Buckley and his company be ordered to pay civil penalties in the amount of \$50,000, representing the amount obtained through the unauthorized practice.

Justin D. Flamm of Taft, Stettinius & Hollister in Cincinnati represented the Cincinnati Bar Association. Timothy Buckley appeared pro se.

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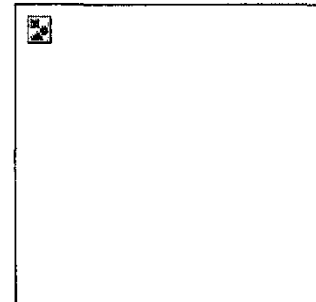


From: Beverly Brown **Sent:** Wed, 09 Sep 2009 11:05:29 GMT
To: Craig Vanbrussel; Sharon Abrams; Jeff Sourbeer; Jon Lin; Ken Nelson; Jannet Lewis; Abdiel Ortiz; Sunil Nemade; Bill Hale; Fred Buhl; Brett Arquette; Ray Green; Craig McLean; Doug Smith; Gary Hagan; John Lake; Gerald Land; Dennis Menendez; Wayne Fountain; Stephen Shaw; Noel Chessman;
CC: Brooke Jones; Trial Court Administrators; Trial Court Chief Judges; Vivian Gonzalez; ctadsg1@ocnjcc.org; Bart Moore;
Subject: FW: Registration Now Open for Tenants' Rights in Foreclosures Course 10/2/09

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.

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

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From: Judge Terrell **Sent:** Tue, 15 Sep 2009 13:39:32 GMT

To: Judge Santurri; Judge Sklevaski; Judge Allen; Judge Shackelford; Judge Ackerman; Judge Bell; Judge Boles; Judge Geeker; Judge Green; Judge Grinstead; Judge Heflin; Judge Johnson; Judge Jones; Judge Joyce Williams; Judge Ketchel; Judge Laporte; Judge Maney; Judge Nobles; Judge Rasmussen; Judge Remington; Judge Ward; Judge Wells; Judge Kinsey; Judge Nickinson; Judge MGoodman; Judge RGoodman; Judge Swanson; Judge Bergosh; Judge KL Williams; Judge Stone; Judge Blibrey; Judge Hilliard; Judge Brace; Judge Brown; Judge Simon;

Subject: FW: PUBLICATION NOTICE: Report of the Supreme Court Task Force on Residential Mortgage Foreclosure Cases

[PublicationNoticeForeclosureReport.pdf \(1.7Kb\)](#) [PublicationNoticeLtrForeclosureReport 9-11-09.pdf \(361Kb\)](#)

The attached link to the mortgage foreclosure task force report is forwarded to you for your review and consideration.

TDT

From: Victoria Milton [mailto:miltonv@flcourts.org]
Sent: Friday, September 11, 2009 2:41 PM
To: Judge Jennifer Bailey; 'Jesse H. Diner'; 'John F. Harkness, Jr.'; 'Mayanne Downs'; Laura Rush; Judge Belvin Perry, Jr.; Judge Charles A. Francis; Judge Daniel B. Merritt, Sr.; Judge Donald R. Moran, Jr.; Judge G. Keith Cary; Judge Hentz McClellan; Judge J. David Langford; Judge David J. Walsh; Judge Lee E. Haworth; Judge Luis Garcia; Judge Manuel Menendez, Jr.; Judge Paul Hawkes; Judge Robert M. Gross, Chief; Judge Victor Tobin; Judge Darryl Casanueva, Chief; Judge David A. Monaco; Judge David Fina; Judge J. Preston Silvernail; Judge J. Thomas McGrady; Judge Joel Brown; Judge Juan Ramirez Jr., Chief; Judge Martha A. Lott; Judge Peter Blanc; Judge Steven Levin; Judge Terrell; Randy Long; Rules Opins-DCA Clerks; Rules Opins-Trial Court Clerks
Subject: PUBLICATION NOTICE: Report of the Supreme Court Task Force on Residential Mortgage Foreclosure Cases

Good Afternoon,

The Florida Supreme Court is seeking comments on the above report and will publish the attached notice in the October 1, 2009, edition of the Florida Bar News. Any comments must be filed on or before October 15, 2009, as indicated in the attached notice.

Thank you,

Victoria Milton
 Deputy Clerk
 Florida Supreme Court
 (850) 488-0125

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The Supreme Court Task Force on Residential Mortgage Foreclosure Cases (Task Force) has submitted to Chief Justice Peggy A. Quince a report proposing a number of administrative strategies, including a statewide managed mediation program, to address the extremely high volume of residential mortgage foreclosure cases pending in the circuit courts.

The Court invites all interested persons to comment on the Task Force report, which is posted online at http://www.floridasupremecourt.org/pub_info/documents.shtml#Reports. Comments must be submitted on or before October 15, 2009, either electronically to e-file@flcourts.org, or as hard copy mailed to:

Clerk of Court
Supreme Court of Florida
500 South Duval Street
Tallahassee, FL 32399-1900

The Task Force chair has until October 22, 2009, to submit a response to any comments provided to the Court.

Oral argument on the Task Force report has been scheduled for November 4, 2009. The Court requests the attendance at oral argument of the Task Force chair and a representative of each of the minority reports.



From: Ned Pope
To: Judge Terrell
Subject: RE: Judge Remington Mediation Program Issues

Sent: Wed, 07 Oct 2009 12:57:14 GMT

Thanks Judge. I'm awaiting a reply from Pat Beard in Judge Remington's office on that matter. I'll work with them going forward to resolve the issue.

-Ned

From: Judge Terrell [mailto:Judge.Terrell@FLCOURTS1.GOV]
Sent: Wednesday, October 07, 2009 1:03 PM
To: Ned Pope
Cc: Ardye Graham; kuderj@bellsouth.net
Subject: RE: Judge Remington Mediation Program Issues

Ned,

All our judges have previously been provided the suggestion that continuances, whether classified emergency or not, in foreclosure cases be granted only with the concurrence of both parties and the Collins Center because of the possible manipulation problem. Unless and until the AO is revised or the Supreme Court approves some form of the recommendations from the Task Force, each judge has the independent discretion to rule on issues in cases assigned to them. Beyond that, I have no problem with your response to Judge Remington. While I personally recommend that all our judges follow your suggestions, I don't believe either the Rules of Judicial Administration or case law authorizes the chief judge to override the independent ruling of an assigned judge. Hopefully, this helps.

TDT

From: Ned Pope [mailto:nedpope@collinsmediation.org]
Sent: Tuesday, October 06, 2009 4:51 PM
To: Judge Terrell
Cc: Ardye Graham; kuderj@bellsouth.net
Subject: Judge Remington Mediation Program Issues

Judge Terrell,

I've answered the questions that came from Pat in Judge Remington's office below. Let me know how you'd like me to proceed.

Q: Judge Remington has received emergency motion to cancel and reschedule mediation because the Collins Center refuses to cancel and reschedule without an order. Not only is it labor intensive for the law firms, but the judge also has to take time to review sign and expedite it back. Is there some good reason why attorneys are not free to reschedule mediations when they or opposing side find a problem with a date and need to reschedule?

A: Rescheduling of the mediation session is not addressed in the current order. As a matter of policy we have never allowed either party to reschedule mediation except in a medical emergency with a doctor's notice. The reason we have this policy is that there's nothing in the original order to stop either party from rescheduling at their convenience, or the other party's expense. Firms and borrowers alike have tried this as a delay tactic in other circuits and the judges have supported our policy. However, in some cases we have been permitted to reschedule with the approval of both parties consistent. Judge Remington's stance is that the attorneys for the plaintiff are officers of the court proceeding and should be able to reschedule whenever they like with or without approval of the defendant.

Q: Same with when a firm determines a home is not owner-occupied, but erroneously filed that it was. Collins Center is requiring a court order. Why would a Notice of Non-Owner Occupancy filed in the court record and copies to Collins Center negate all the extra paperwork and judges time and efforts? Both of these seems to be the Collins Center requiring extra work on the courts.

A: If a firm certifies at the time of filing that the residence is owner-occupied, and we contact the borrower at the residence and they confirm that they live in the residence we schedule a mediation session. If a firm then files an amended Form A stating the borrower is not occupying the residence it's one party's word against another. We are not in a position to pick sides in that dispute. The recommended approach that we've been given from the

judges in the 19th Circuit is to check for a valid homestead on the property online. If we find the homestead is present then we move forward with the mediation unless the presiding judge sides with the plaintiff in the dispute and orders us to cancel. Until the new AO is implemented specifically stating "valid homestead" as the only qualification this is the best we can do to maintain our neutrality in the case.

Let me know what stance on these you 'd like to take and we 'll implement that approach for the entire circuit. The last thing we want to do is put more work on the courts to address these issues but in the absence of specific language addressing each in the AO we have to maintain a neutral position and treat both parties equally. Judge Remington is essentially asking us to side with the attorneys for the plaintiff in both matters and we are not comfortable taking that position unless specifically mandated to do so by the court.

Talk to you soon
-Ned

From: john kuder [mailto:kuderj@bellsouth.net]
Sent: Saturday, October 03, 2009 7:41 PM
To: Ned Pope
Subject: Fwd: Re: RE:

Sent from my iPhone

Begin forwarded message:

From: john kuder <kuderj@bellsouth.net >
Date: September 29, 2009 12:54:54 PM EDT
To: Judge Terrell <Judge.Terrell@FLCOURTS1.GOV >
Subject: Re: RE:

Chief

This relates to managment decisions so I am forwarding it to the program director for his response.

John

Sent from my iPhone

On Sep 29, 2009, at 11:03 AM, "Judge Terrell " <Judge.Terrell@FLCOURTS1.GOV > wrote:

As the liaison to the Collins Center for the First Circuit, this e-mail stream is being copied to Retired Judge John Kuder for review. He is requested to respond in a timely manner.

TDT

From: Ardye Graham
Sent: Tuesday, September 29, 2009 10:57 AM
To: Patricia Beard
Cc: Judge Terrell
Subject: RE:

All of this is beyond my knowledge zone. I'm forwarding your email to Judge Terrell for direction.

From: Patricia Beard
Sent: Tuesday, September 29, 2009 10:18 AM

To: Ardye Graham
Subject: RE:

Aryde,

Judge Remington has received emergency motion to cancel and reschedule mediation because the Collins Center refuses to cancel and reschedule without an order. Not only is it labor intensive for the law firms, but the judge also has to take time to review sign and expedite it back. Is there some good reason why attorneys are not free to reschedule mediations when they or opposing side find a problem with a date and need to reschedule? Same with when a firm determines a home is not owner-occupied, but erroneously filed that it was. Collins Center is requiring a court order. Why would a Notice of Non-Owner Occupancy filed in the court record and copies to Collins Center negate all the extra paperwork and judges time and efforts? Both of these seems to be the Collins Center requiring extra work on the courts.

Thanks for any help you can provide.

Pat Beard

Judicial Assistant to
Circuit Judge Thomas T. Remington
Okaloosa Courthouse Annex, Suite C 121
1250 Egin Parkway
Shalimar, FL 32579
Phone: 850.651.7474
Fax: 850.651.7333
E: patricia.beard@flcourts1.gov

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From: Ardye Graham
Sent: Tuesday, September 29, 2009 10:09 AM
To: ESC-JA's; OKA-JA's; SRA-JA's; WAL-JA's
Subject:

From: Judge Terrell
Sent: Friday, September 25, 2009 4:39 PM
To: Judge Ackerman; Judge Allen; Judge Bell; Judge Bergosh; Judge Bilbrey; Judge Boles; Judge Brace; Judge Brown; Judge Geeker; Judge Green; Judge Grinsted; Judge Hefflin; Judge Hilliard; Judge Johnson; Judge Jones; Judge Joyce Williams; Judge Ketchel; Judge Kinsey; Judge KL Williams; Judge Laporte; Judge Maney; Judge MGoodman; Judge Nickinson; Judge Nobles; Judge Rasmussen; Judge Remington; Judge RGoodman; Judge Santurri; Judge Shackelford; Judge Simon; Judge Skievaski; Judge Stone; Judge Swanson; Judge Ward; Judge Wells
Cc: John Kuder; Robin Wright; Ardye Graham; Kerl Igney
Subject: Mortgage Foreclosure Mediation Request to Ensure Compliance

Mrs. Graham, please forward a copy of this e-mail to all JA 's. JA 's should print this e-

mail for any judge who does not use a computer or read e-mail.

Mrs. Wright and I attended a circuit-wide meeting with the clerks of court last Friday, September 18. A portion of the meeting was focused on the First Circuit Mortgage Foreclosure Mediation Program. John Kuder and other representatives of the Collins Center discussed the current issues facing the program.

One deficiency identified in the pilot programs, including ours, dealt with the failure of lenders to file Form "A". That is the document that triggers the mediation program. Pending the Supreme Court's opinion on the Mortgage Foreclosure Task Force Report, judges in the First Circuit may choose to use a mechanism to enforce compliance. While we await action from the court, a couple of suggestions follow in that regard.

The First Circuit Administrative Order went into effect April 1, 2009. Therefore, any mortgage foreclosure complaint filed on or after that date on a homestead/owner occupied property must comply with the AO.

You may decide that no motion for summary judgment hearing should be set until notice of impasse is received from the Collins Center.

Alternatively, when setting a motion for summary judgment hearing for a lending institution filed foreclosure action, you may want to direct your JA to either check the clerk's computer docket or ask whether the complaint was filed on or after April 1, 2009. If so, then follow up by asking whether the foreclosure property is homestead/owner occupied. If the attorney's scheduling secretary says either: "Yes" or "I don't know", then the JA can mention that the judge will not grant summary judgment if the Administrative Order has not been followed.

Of course, a judge can review the file at a summary judgment hearing and decline to enter judgment in the absence of compliance with the AO.

The Collins Center is exploring and may recommend other mechanisms to facilitate compliance.

Following these recommendations will require a little diligence on our part but, as the program stats are demonstrating, should be beneficial. If you have other suggestions, please share them.

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From: [Robin Wright](#)

Sent: Mon, 11 Jan 2010 17:30:59 GMT

To: [Judge Terrell](#)

Subject: FW: Economic Default Recovery Effort

[Economic Default Recovery Effort.pdf \(7Kb\)](#) [EconomicDefaultRecoveryEffort Distribution.xls \(29Kb\)](#)

From: Heather Thuotte-Pierson [mailto:piersonh@flcourts.org]
Sent: Monday, January 11, 2010 12:03 PM
To: Trial Court Administrators
Cc: Lisa Goodner; Sharon Buckingham; Kristine Slayden; Patty Harris; Theresa Westerfield; Arlene Johnson; Charlotte Jerrett; Greg Youchock; Elizabeth Garber
Subject: Economic Default Recovery Effort

TCA's --

As discussed at the December meeting, the TCBC is requesting non-recurring funding authority from the Legislature for an Economic Default Recovery Effort, which will be filed as a supplemental FY 2010/11 LBR issue. These funds will be used to provide temporary resources in the trial courts to eliminate backlog in several civil areas, including cases involving mortgage foreclosures, real property, contracts and indebtedness, and county civil valued from \$5,001 to \$15,000.

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

You will find the estimated allocation amount for your circuit in the attached PDF file - Economic Default Recovery Effort. Please indicate, using the attached Economic Default Recovery Effort _ Distribution spreadsheet, how you would like the funds for your circuit distributed -- by category and element. For every element (General Magistrates, Case Managers, General Magistrate Admin Support and Mediation Admin Support) specify the dollar amount and category in which the funds should be allocated - OPS, contracted services and/or expenses dollars. To allow for maximum flexibility, funds may be expended in one or all of the elements. Also, funds dedicated to the General Magistrate element can be allocated as Senior Judge Days if preferred.

As usual we are under a tight timeframe for this Effort. Please respond by Thursday, January 14, C.O.B.

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

Thanks,
Heather

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

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Economic Default Recovery Effort

Circuit	Estimated Number of Backlog Cases (FY 2006-07 to FY 2010-11) ¹	Estimated Allocations for FY 2010/11
1	17,739	\$170,994
2	7,134	\$85,993
3	2,356	\$85,993
4	30,144	\$341,988
5	28,511	\$341,988
6	51,993	\$515,448
7	27,851	\$341,988
8	3,404	\$85,993
9	65,989	\$683,976
10	15,992	\$170,994
11	126,197	\$1,385,856
12	37,077	\$341,988
13	55,143	\$687,264
14	6,118	\$85,993
15	86,380	\$1,039,392
16	3,650	\$85,993
17	86,912	\$1,039,392
18	45,850	\$512,982
19	27,532	\$341,988
20	59,091	\$683,976
Total	785,063	\$9,030,179

¹ Estimated Number of Backlog Cases calculated for contract and indebtedness, real property/mortgage foreclosure, and county civil (\$5,001 to \$15,000) cases. Backlog cases were determined by subtracting the number of dispositions from the number of filings. The official trial court statistics were used for fiscal year 2006-07 to 2008-09, annualized data (July to October) were used for fiscal year 2009-10, and certification projections were used for fiscal year 2010-11. The dispositions for fiscal year 2010-11 were based on the filing to disposition ratio in fiscal year 2006-07.

Economic Default Recovery Effort

Circuit _____

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

Case Managers			
OPS	Contracted Services	Expense	Total
			\$0.00

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

Mediation Admin Support			
OPS	Contractual Services	Expense	Total
			\$0.00



From: Tom Bateman
Sent: Tue, 19 Jan 2010 09:41:29 GMT
To: foreclosure-defense@googlegroups.com
CC: DadeLegalAid@yahooogroups.com; jaxforeclosureprobonoproject@googlegroups.com;
SWFL_Foreclosure_Defense@yahooogroups.com; tampa-foreclosure-project@googlegroups.com;
Subject: Re: please share your Collins Center experiences

Since the FSC has issued its AO, which included a model AO, the 1st, 11th and 19th Circuit Chief Judges have been working on amending their circuit's AO to nearly mirror the model. The 4th, 6th, 10th, 12th 14th and 20th are also considering issuing their own AO's based on the supreme court's model.

The model covers the issues being discussed here, including but not limited to, who must appear at the mediation, scheduling another mediation session at no charge to either party, what documents the borrower must provide, what documents the borrower may ask for (I don't like this provision because most borrowers will not know to ask; however, the Collins Center will be telling the borrowers they can ask for the documents when it sends out its notices and financial counseling information and providing a copy of the form that can be filed with the court). Here is a link to the FSC's AO which has attached to it the model AO. http://www.floridasupremecourt.org/pub_info/documents/AOSC09-54_Foreclosures.pdf

See Appendix A, page 12. I recommend that everyone who is doing these cases in court start holding the lenders' feet to the fire to ensure compliance. If they don't comply, apply to the court for a sanction. The judges are open to it.

Finally, remember, the managed residential foreclosure programs are court programs, not the Collins Center's - a fact lost on many. In fact, some of the new programs that will be coming into existence will be other providers and not the Collins Center. Judges are finally starting to take some ownership of the programs and don't like it when their orders are not followed. But, non-compliance has to be brought to the presiding judge's attention. She doesn't have time to ferret out the problems herself.

THB III

On Mon, Jan 18, 2010 at 4:35 PM, Susan Von Hoene <susan@vonhoenelawfirm.com> wrote:

this has been my experience too. In the first District they are allowing the lender to appear by phone (most of the judges). Even when I have a client that really wants to modify; submits all requested financial information well in advance (and has been submitting all along to lender) all I get is "we will have to look at the financial info and will get back in 60 days". Which is code for we are doing nothing. In cases where my clients want to really modify I have asked for another mediation to be scheduled in 60 days because we get no response from lender. In every case the lender says no we will really get an answer. the mediator just says if the lender doesn't agree they have no authority to set up a second mediation.

It is another step slowing down the process but that's it. Susan Von Hoene

From: foreclosure-defense@googlegroups.com [mailto:foreclosure-defense@googlegroups.com] **On Behalf Of** Mark A. Violette
Sent: Sunday, January 17, 2010 8:56 AM
To: foreclosure-defense@googlegroups.com; DadeLegalAid@yahooogroups.com;
jaxforeclosureprobonoproject@googlegroups.com;
SWFL_Foreclosure_Defense@yahooogroups.com; tampa-foreclosure-project@googlegroups.com

Subject: RE: please share your Collins Center experiences

One experience I have is that the process is not a true "mediation". It should be called "Disclosure of Borrower's Financial Documents in Hopes for a Modification of Mortgage Under Lender Terms". A true "Mediation" would allow for alternative resolutions, including DIL, debt forgiveness, forbearance agreements, etc. To date, ever "mediation" has been solely for the purpose of modification of interest rate and term only !!!

Many Thanks,

Mark

Mark A. Violette, P.A.

4481 Legendary Drive, Suite 200

DestIn, Florida 32541

(850) 424-5595 - Telephone

(850) 424-5596 - Facsimile

markviolettepa.com

From: foreclosure-defense@googlegroups.com [mailto:foreclosure-defense@googlegroups.com] **On Behalf Of** April Charney

Sent: Friday, January 15, 2010 7:07 PM

To: DadeLegalAid@yahoogroups.com; jaxforeclosureprobonoproject@googlegroups.com; foreclosure-defense@googlegroups.com; SWFL_Foreclosure_Defense@yahoogroups.com; tampa-foreclosure-project@googlegroups.com

Subject: please share your Collins Center experiences

Either via the listserv or privately to me. Thank you for your assistance.

No virus found in this incoming message.

Checked by AVG - www.avq.com

Version: 8.5.432 / Virus Database: 270.14.145/2626 - Release Date: 01/16/10 07:35:00

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You received this message because you are subscribed to the Google Groups "Foreclosure Defense" group.

To post to this group, send email to foreclosure-defense@googlegroups.com.

To unsubscribe from this group, send email to foreclosure-defense+unsubscribe@googlegroups.com.

For more options, visit this group at <http://groups.google.com/group/foreclosure-defense?hl=en>.

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From: Judge Terrell **Sent:** Wed, 20 Jan 2010 14:18:30 GMT

To: [Judge Santurri](#); [Judge Skievaski](#); [Judge Allen](#); [Judge Shackelford](#); [Judge Ackerman](#); [Judge Bell](#); [Judge Boles](#); [Judge Geeker](#); [Judge Green](#); [Judge Grinsted](#); [Judge Heflin](#); [Judge Johnson](#); [Judge Jones](#); [Judge Joyce Williams](#); [Judge Ketchel](#); [Judge Laporte](#); [Judge Manev](#); [Judge Nobles](#); [Judge Rasmussen](#); [Judge Remington](#); [Judge Ward](#); [Judge Wells](#); [Judge Kinsey](#); [Judge Nickinson](#); [Judge MGoodman](#); [Judge RGoodman](#); [Judge Swanson](#); [Judge Bergosh](#); [Judge KL Williams](#); [Judge Stone](#); [Judge Bilbrey](#); [Judge Hilliard](#); [Judge Brace](#); [Judge Brown](#); [Judge Simon](#); [Judge Rimmer](#);

CC: [Robin Wright](#); [Keri Igney](#); [John Kuder](#);

Subject: FW: 1st Circuit Statistical Report

[1-15 Mediation Report - 1st Circuit.pdf \(40Kb\)](#)

Here are the most recent statistics on the First Circuit Owner Occupied Foreclosure Mediation Program.

With some confusion over what was going to happen in the wake of the report to the Supreme Court on the State-wide Task Force on Foreclosure Mediations, it is not surprising that a drop off in successful mediations occurred.

Revisions to the Supreme Court's Model Administrative Order are being drafted to make to order applicable to this circuit. The adoption of the Model Order from the Supreme Court will give us clear enforcement authority. We are including language to "grandfather" the current First Circuit Administrative Order into the new order to facilitate continuing mediation while all the requirements of the Model Order are being satisfied, particularly to extra training for foreclosure mediators.

TDT

From: Ned Pope [<mailto:nedpope@collinsmediation.org>]
Sent: Friday, January 15, 2010 8:47 AM
To: Judge Terrell; 'john kuder'
Subject: 1st Circuit Statistical Report

Ned Pope
 Director
 Mortgage Foreclosure Mediation Program

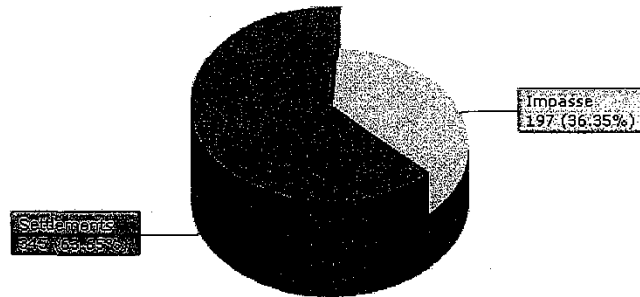
.....
Collins Center for Public Policy
 Thinking. Doing. For Florida.

2630 Centennial Place, Suite 2
 Tallahassee, Florida 32308
 850.219.0082 x106
 850.219.0491 fax
npope@collinscenter.org
www.collinscenter.com

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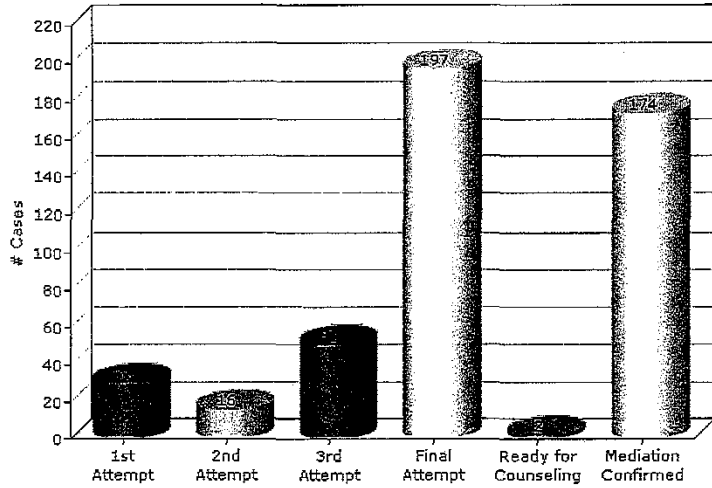
**1st Circuit
1/15/2010**

Mediation Program Outcomes

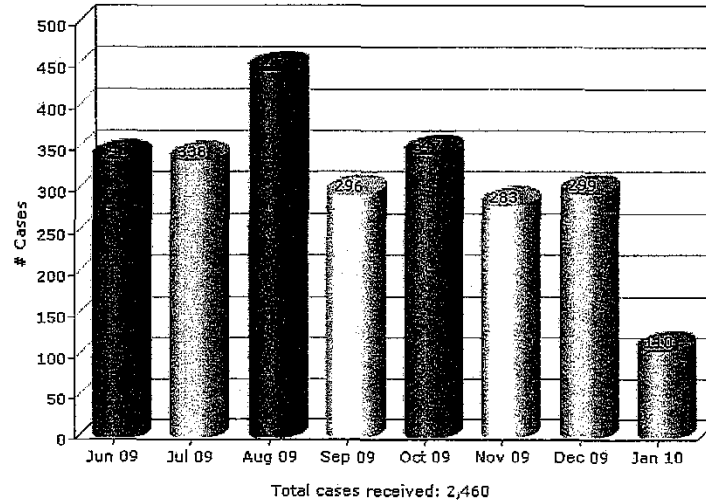


Cases settled prior to mediation: 111
 Total successful outcomes: 456
 Total mediations completed: 653

Collins Center Workflow



Cases Received by Month





From: Laura Rush **Sent:** Thu, 21 Jan 2010 13:09:20 GMT
To: Trial Court Administrators; Trial Court Chief Judges;
Subject: Guidance on AOSC09-54 - Final Report and Recommendations on Residential Mortgage Foreclosure Cases

Model Administrative Order.doc (618Kb)

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

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From: [Judge Terrell](#) **Sent:** Tue, 26 Jan 2010 08:35:00 GMT
To: [Keri Igney](#)
CC: [Judge Rasmussen](#); [Robin Wright](#);
Subject: FW: MAO

[19 MAO Draft 1-14-10.docx \(107Kb\)](#) [image001.gif \(6Kb\)](#)

The attachment is the proposed draft of the MAO from the 19th Circuit on the mortgage foreclosure mediation program. In e-mails with the 11th and the 19th, there is an expressed effort for all three pilot circuits to sign their local r4visions of the model order on February 15. There has been communication that the pilot AO's should be grandfathered in until December 31, 2010, to provide adequate time for mediator training. The intent is to expedited mediator training as quickly as possible. I want to talk about this at the administrative meeting tomorrow.

From: Burton Conner [mailto:ConnerB@circuit19.org]
Sent: Wednesday, January 20, 2010 9:52 AM
To: Jennifer Bailey; Judge Terrell
Subject: RE: MAO

Jennifer and Terry,
This email is directed just to the two of you. First, I am attaching (in case I forgot to send it to you previously) the draft MAO we are considering entering in the 19th. I do think it is a good idea if our three circuits adopt MAO drafts that are as similar as practical. If you have thoughts as to what needs to be tweaked to obtain consistency between the 3 circuits, please let me know.

When I generated the attached draft, I overlooked dealing with the "grandfather" issue concerning existing mediators. The ADR Rules and Policy Committee is meeting by conference call on Jan. 29. I will try to find out then when (and if) any mediation training programs for the RMFM Programs will become available. I will let you know what I find out.

My read of the Chief Justice's AO is that it is silent on the issue of what latitude each circuit is allowed to make changes to the MAO. If you have thoughts on that issue, I would like to know what you think.

Jennifer, have you responded to Tom's email below?

Any idea how close your circuit is to adopting the MAO?

Have a Great Week!
Burton

From: Tom Bateman [mailto:TBateman@lawfla.com]
Sent: Friday, January 15, 2010 1:32 PM
To: Jennifer Bailey; Joel Brown; Judge Terrell
Cc: Burton Conner
Subject: RE: MAO

Yes, I forgot, this is also a question that has been asked: are the trained mediators on the CC's roster "grandfathered" in, so to speak, until one of the FSC certified trainers get a program in place so there is no gap in providing mediation services?

Perhaps the issue can be covered in each circuit's AO by inserting a "grandfather" provision that would be in effect for 90-120 days so the already trained mediators can get the additional training the FSC AO requires.

Just a thought.

>>> "Judge Terrell" <Judge.Terrell@FLCOURTS1.GOV> Friday, January 15, 2010 1:19 PM >>>
Staff has been working on revising the model AO from the Supreme Court to make it applicable to the First Circuit with relevant transition or incorporation language relating to our pilot project AO. We don't want any gaps between the applicability of the orders. We will take a look at what the Collins Center has proposed and get back with you.

One central question is what is being done to ensure Collins Center mediators, or others, meet all the standards required by the SCAO, and do the standards create any problems in the interim while mediators are getting fully qualified?

TDT

From: Tom Bateman [mailto:TBateman@lawfla.com]
Sent: Friday, January 15, 2010 12:07 PM
To: Jennifer Bailey; Joel Brown; Judge Terrell
Cc: Burton Conner
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One of the issues to consider and to try and get consensus is what provisions in the AO are modifiable taking individual circuit's operations into account. This very question was posed by the judges in the 14th circuit yesterday when I met with them. Of course, I didn't bite and said I would try to get back to them.

As chair of the Task Force, Judge Bailey, have you given the issue some consideration?

THB III

>>> "Bailey, Jennifer" <JBailey@jud11.flcourts.org> Friday, January 15, 2010 12:19 PM >>>
We have just started to do the comparison and will take a look at this. Just a thought, and I would defer to my chief on this, but maybe we should all three hold our revised AO's until we have reviewed things and gotten on the same page?

Jennifer D. Bailey
Administrative Judge, Civil Division
11th Judicial Circuit
Miami-Dade County Courthouse
73 W. Flagler St., Room 1307
Miami, FL 33130
(305) 349-7152

From: Tom Bateman [mailto:TBateman@lawfla.com]
Sent: Friday, January 15, 2010 11:29 AM
To: Bailey, Jennifer; Judge.Terrell@FLCOURTS1.GOV
Cc: Burton Conner
Subject: Fwd: MAO

Judges Bailey and Terrell,

I am forwarding to you the draft of the AO the 19th is considering with the hope that the 1st and 11th will, in substance, issue the same or a similar AO, with the understanding that there are some local issues that have to be addressed in each.

For your information, the 10th, 12th and 14th asked for and have received presentations from the Collins Center folks and a presentation is planned for the 4th Circuit in the next 10 days. Judge Lynn Tepper has advised me that the 6th Circuit chief, Tom McGrady, is putting together an RFP. And, I understand that the 13th Circuit is considering something, too.

So, if the 1st, 11th and 19th's AO's can be as similar as possible, it will go a long way toward convincing any other circuit that its AO should be the same or nearly the same as yours.

Hope all is well with you both.

To

 cid:XKNFRLGKPGHN.logo.gif

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

Direct Phone: (850) 553-3453
Office Phone: (850) 222-0720
Direct Fax: (850) 558-0674
Office Fax: (850) 224-4359

Email: tbateman@lawfla.com
Web: www.lawfla.com

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m

>>> Burton Conner <ConnerB@circuit19.org> Thursday, January 14, 2010 4:12 PM >>>

Ned,

Have either the 1st or 13th Circuit adopted the MAO approved by the Supreme Court

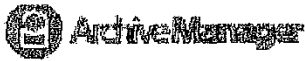
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If you have any comments, please advise.

Thanks,
Burton

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From: [Keri Igney](#) **Sent:** Tue, 26 Jan 2010 09:50:00 GMT
To: [Judge Terrell](#)
Subject: RE: MAO

[image001.gif \(6Kb\)](#)

An observation:
 I could understand the “grandfathering” plan but for the fact that our pilot AO does not contain anything in it that, in my opinion (perhaps an inadequate one), qualifies to grandfather. The new AO bears the same exact language as it relates to the mediators. I believe any reference to the maintenance of our pilot AO would cause a reader to go back to 2009-18 and try to figure out the reason for leaving that one in place. In the absence of clarity, I’m guessing more phone calls will arrive to the staff member you assign to monitor this program.

I notice in the enclosed MAO the Nineteenth shows in the two previous AOs “amended;” yet in the text portion of the AO he “replaces” the same two AOs. Thusfar, I am unable to locate the “grandfather” clause in the 19th’s MAO.

Oops! I see now where Judge Conner mentions overlooking the “grandfather” issue in this AO. So – disregard my blurb about that.
 I see where he will provide you folks an update after the January 29 meeting of the ADR Rules and Policy Committee on the subject of training availability.

From: Judge Terrell
Sent: Tuesday, January 26, 2010 8:36 AM
To: Keri Igney
Cc: Judge Rasmussen; Robin Wright
Subject: FW: MAO

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Hope all is well with you both.

To

 cid:XKNFRLGKPGHN.logo.gif

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

Direct Phone: (850) 553-3453
Office Phone: (850) 222-0720
Direct Fax: (850) 558-0674
Office Fax: (850) 224-4359

Email: tbateman@lawfla.com
Web: www.lawfla.com

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m

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Have either the 1st or 13th Circuit adopted the MAO approved by the Supreme Court yet? I am attaching the draft of the AO I am submitting to my Chief Judge and fellow civil judges for adoption in the 19th Circuit.

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From: [Burton Conner](#) **Sent:** Thu, 28 Jan 2010 14:34:37 GMT
To: [Bailey, Jennifer](#)
CC: [Judge Terrell](#)
Subject: RE: Guidance on AOSC09-54 - Final Report and Recommendations on Residential Mortgage Foreclosure Cases

Hi, Jennifer. Yes, I worked of the S.Ct. adopted version. I will send you and Terry an email I got from Cal Goodlett which gave me a list of the modifications the S.Ct. made to the Task Force version of the MAO. You can both double check and see if the draft MAO for the 19th caught all the changes made by the S.Ct.
 Burton

From: Bailey, Jennifer [mailto:JBailey@jud11.flcourts.org]
Sent: Thursday, January 28, 2010 3:19 PM
To: Burton Conner
Subject: FW: Guidance on AOSC09-54 - Final Report and Recommendations on Residential Mortgage Foreclosure Cases

Burton, for your draft from the 19th did you work off of the Supreme Court adopted version or from the MAO?

Jennifer D. Bailey
 Administrative Judge, Civil Division
 11th Judicial Circuit
 Miami-Dade County Courthouse
 73 W. Flagler St., Room 1307
 Miami, FL 33130
 (305) 349-7152

From: Lonergan, Sandy
Sent: Thursday, January 28, 2010 3:16 PM
To: Bailey, Jennifer
Cc: Indelicato, Paul; Weaver, William
Subject: FW: Guidance on AOSC09-54 - Final Report and Recommendations on Residential Mortgage Foreclosure Cases

Hi Judge,
 You probably received this but just in case, I am forwarding it to you. Please let us know if we can be of further assistance.

Sandy

From: Laura Rush [mailto:RushL@flcourts.org]
Sent: Thursday, January 21, 2010 2:09 PM
To: Trial Court Chief Judges; Trial Court Administrators
Subject: Guidance on AOSC09-54 - Final Report and Recommendations on Residential Mortgage Foreclosure Cases

Chief Judges and Court Administrators,

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From: Judge Terrell
To: Judge Rasmussen
CC: Robin Wright; Keri Igney;
Subject: FW: RMFM Program MAO

Sent: Thu, 28 Jan 2010 14:57:00 GMT

Summary changes MAO 1-5-10.doc (49Kb)

FYI

From: Burton Conner [mailto:ConnerB@circuit19.org]
Sent: Thursday, January 28, 2010 2:38 PM
To: Bailey, Jennifer; Judge Terrell
Subject: FW: RMFM Program MAO

Jennifer and Terry,
Attached is the summary of changes to the TF version of the MAO by the SCt that Cal sent to me.
Burton

From: Cal Goodlett [mailto:GoodletC@fcourts.org]
Sent: Tuesday, January 05, 2010 11:02 AM
To: Burton Conner
Cc: Laura Rush
Subject: RE: RMFM Program MAO

Burton,
Am attaching summary reflecting substantive changes to the MAO. If you find I've missed something, please let me know--
Best of days—
Cal

From: Burton Conner [mailto:ConnerB@circuit19.org]
Sent: Monday, January 04, 2010 5:48 PM
To: Cal Goodlett; Laura Rush
Subject: RMFM Program MAO

Cal and Laura,
I was on vacation last week, and was pleasantly surprised when I opened the email from Alan Bookman which had the SCOA entered last week which deal with residential foreclosures. I have not had a chance to read the MAO approved by the court, but as I read the AO, apparently there were some changes to the MAO recommended by the Task Force.

If either of you are at liberty to do so, could by tell me what got changed? If that is inappropriate, I understand, and I will do a side-by-side comparison.

Thanks again for all the hard work both of you did on this project.

Cal, I see the ADRR&P Committee has some work delegated to it under the AO.

I hope you both have an awesome 2010!!!

Burton

This e-mail has been scanned by Verizon Business Managed Email Content Service, using Skeptic (tm) technology powered by MessageLabs.

CHANGES TO TASK FORCE'S PROPOSED MAO

Definitions

[at page 2] "The Program Manager" means *[name of Program Manager]*, qualified in accordance with parameters attached as Exhibit 13. Also referred to as the "Mediation Manager."

5. Responsibilities of Plaintiff's Counsel; Form A.

[Paragraph 3, 3rd line from end] All amended Forms 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.

6. Responsibilities of Borrower.

[Paragraph 3] It shall be the responsibility of the Program Manager to ~~transmit~~ upload 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 uploaded.

7. Plaintiff's Disclosure for Mediation

[last paragraph] Plaintiff's counsel is responsible for ~~assuring~~ 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 ~~3.5~~ business days before the mediation session. The Program Manager shall immediately deliver a copy of Plaintiff's Disclosure For Mediation to the borrower ~~no later than the beginning of the mediation session~~.

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.

- 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 U.S. 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 he or she 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 he or she 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.**
[Paragraph 2, final sentence] 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.
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; and the borrower; and the

~~borrower's counsel of record, if any.~~ Provided, however, that the plaintiff's representative may appear at mediation through the use of communication equipment, if plaintiff files and serves at least 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.

[New paragraph 2]

~~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, and 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 Model Administrative Order. The written roll and communication of authority to the Program Manager is not a mediation communication.~~

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 ~~or by order of a court of competent jurisdiction.~~

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), Fla. R. Civ. P., 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/total amount]. Unless otherwise ordered by the presiding judge, the program fees shall be paid payable as follows:~~

- 1) ~~not more than \$400.00/amount*/~~ 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/amount**/~~ paid by plaintiff within 10 days after notice of the mediation conference is filed ~~for the mediation fee component of the RMFM Program fees~~

~~[amount* is the total of the administrative fees of the RMFM Program, including outreach to the borrower, and the foreclosure counseling fees]
[amount** is 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 sessions shall be no more than \$350.00 [amount] per session.

[Paragraph 19, last sentence] The total fees includes 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 ~~the 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.

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 which 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 his or her designee in the format and with the frequency required by the Chief Judge.

~~If the Program Manager has sufficient staff and resources, the Program Manager may assist with enforcing compliance with this Administrative Order upon filing a written motion pursuant to Florida Rule of Civil Procedure 1.100(b) stating with particularity the grounds therefor and the relief or order sought. Example orders are attached as Exhibit 11.~~

23. ***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, and if the pre-suit mediation having procedures substantially complying with the requirements of this Administrative Order, including provisions authorizing the exchange of information, and 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.~~

Exhibits ~~Addition of Parameters for Managed Mediation as Exhibit 13~~



From: [Judge Terrell](#) **Sent:** Tue, 02 Feb 2010 09:17:00 GMT
To: [Judge Rasmussen](#); [Robin Wright](#); [Brooke Jones](#);
CC: [Keri Igney](#); [Ardye Graham](#);
Subject: RE: Agenda Items

MAO Mortgage Foreclosure

From: Brooke Jones
Sent: Tuesday, February 02, 2010 8:01 AM
To: Judge Terrell; Judge Rasmussen; Robin Wright
Cc: Ardye Graham; Keri Igney
Subject: Agenda Items

If you have any agenda items for the Chief Judge Administrative meeting tomorrow morning, please let me know by 4pm today. Thank you,

Brooke

Brooke Jones
Administrative Assistant to Robin Wright, Court Administrator
First Judicial Circuit
Court Administration
(850)595-4400
brooke.jones@flcourts1.gov

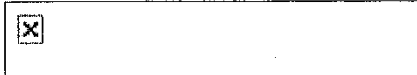
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This message was sent with High Importance.

From: Judge Terrell **Sent:** Wed, 03 Feb 2010 18:05:49 GMT
To: Judge Rasmussen
CC: Robin Wright
Subject: FW: First Circuit's Residential Mortgage Foreclosure Mediation program

From: Albert Orosa [mailto:Orosaa@adr.org]
Sent: Wednesday, February 03, 2010 2:10 PM
To: Judge Terrell
Cc: Maria Rivero; Albert Orosa
Subject: First Circuit's Residential Mortgage Foreclosure Mediation program
Importance: High



February 3, 2010

Terry D. Terrell, Chief Judge
First Judicial Circuit of Florida
190 Governmental Center, Fifth Floor
Pensacola, Florida 32502

Dear Judge Terry,

The American Arbitration Association (“AAA”) is pleased to announce that we have been selected to serve in the capacity of Mediation Program Manager for the 17th Judicial Circuit Court of Florida’s Residential Mortgage Foreclosure Mediation program. Due to our involvement in this

program, the AAA is also very interested in an opportunity to discuss and propose an AAA-administered mediation program for other Florida Circuit Courts under those guidelines and parameters issued by the Florida Supreme Court's Administrative Order on Residential Mortgage Foreclosure Mediation. Our objectives are to leverage our significant investment in the development of this program and our physical presence in Florida to serve as a resource to the Florida Courts and other key stakeholders. Additionally, the AAA seeks to facilitate and increase early and equitable resolution of residential mortgage foreclosure cases, protect the rights of homeowners and lenders and ease the burden on the courts. Through the advantage of AAA's state-of-the-art technology platforms and our economies of scale, we can now deliver this service at a reasonably low cost in compliance with the Supreme Court's AOSC09-54.

The AAA is a 501(c) (3), not for profit organization, with eight decades of experience and an enviable national reputation in ADR programs all over the country and throughout the world. The AAA, more than any other organization in dispute resolution with the exception of the courts, has comprehensive experience in high-volume claims programs, particularly involving the service industry, consumers and homeowners. The AAA is the nation's largest full-service alternative disputes resolution (ADR) provider, and our leadership role in this field results from our long history, invaluable experience and expertise administering a wide range of disputes and caseload types. The Association is dedicated to the development and widespread use of prompt, effective, and economical methods of dispute resolution and provides services to individuals and organizations who wish to resolve conflicts through means other than traditional litigation.

Having two AAA full service offices and experienced Executives located in Florida, allows the AAA to work closely on a local level with the local Courts, Bar Associations, Lenders, Borrowers and other stakeholders to bring all of our global knowledge and experience and local insight in support of this effort to ensure the timely and effective Circuit-by-Circuit execution of the required mediator foreclosure training and the implementation and administration of each Circuit Court's Residential Mortgage Foreclosure Mediation program.

As a candidate for the Circuit's Mediation Program Manager, the Association Confirms That We Satisfy the Following Characteristics and Capabilities:

- Compliant with ADR principles as promulgated by the Supreme Court, and ADR statutes and rules;
- Non-profit entity of proven competence, autonomous and independent of the judicial branch;
- Capable of efficient administration of large case loads;
- Sensitive to cultural, diversity, and Americans with Disabilities Act issues;
- Politically and professionally neutral;
- Knowledgeable of court procedures, current trends, laws, rules, and regulations affecting

residential foreclosures;

- Fiscally transparent and accountable;
- Quickly adaptable to a dynamic and rapidly evolving legal environment;
- Financially stable;
- Capable of sustained operation without fiscal impact on the courts;
- Capable of effectively implementing information technology systems and web-based programs;
- Alert to ethical and confidentiality issues; and
- Are agreeable to acting as manager for voluntary pre-suit mediation.

The AAA affirms that it is fully prepared and capable to execute the duties as detailed under the Supreme Court's Administrative Order as well as any future Administrative Order issued by the Supreme Court or the Chief Judge of the local Judicial Circuit in regards to the Residential Mortgage Foreclosure Mediation program. Additionally, the AAA is prepared to design, develop and implement a training program to ensure that a sufficient number of Circuit Civil certified mediators are trained in the specialized parameters established by the Supreme Court and the local Circuit Court for residential mortgage foreclosure workout options and resources. We are able to commence operations and begin accepting referrals as Mediation Program Manager upon reasonable notice in accordance with the Court's needs. One of our local AAA Executives will follow-up this letter with a personal call to discuss how the AAA may serve as a resource to the Court moving forward.

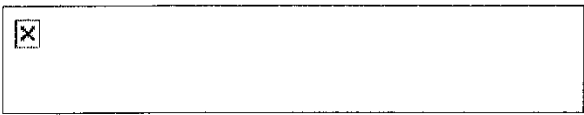
Cordially,

Albert J. Orosa

Elaine Lerner

Albert J. Orosa
Vice President
American Arbitration Association
100 S.E. 2nd. Street, Suite 2300
Miami, FL 33131
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www.adr.org

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From: [Keri Igney](#)

Sent: Thu, 04 Feb 2010 09:12:12 GMT

To: [Judge Terrell](#)

Subject: MAO - 19th to First

 [19TH CIRCUIT MAO CONVERTED TO FIRST WITH CHANGES 2.4.10.docx \(416Kb\)](#)

I have changed the 19th Circuit's order to reflect it belongs to the First Circuit.

I highlighted (in yellow) that portion of the order you changed.

I altered his done and ordered clause because he REPLACES his two previous AOs. My understanding is you are amending our 2009-18 and will eventually enter an order that makes this one (2010-01) the standing order. Please take a look at your done and ordered here.

NOTE: I did not take the time to alter the formatting the 19th used. (It is truly cumbersome and burdensome...) When you have the text you desire, I will compare what we have line by line and I will move the enclosed order INTO our existing MAO so that our formatting can be honored.

The 19th has a newer version of WORD than we do so our computers will continue to "adjust" that document to meet the lesser requirements of our WORD program. (Probably more than you wanted to know...)

Here is the newest draft that may also be found at: Chief Judge/Mortgage Foreclosure

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

IN THE COURTS OF THE FIRST JUDICIAL CIRCUIT

IN AND FOR THE STATE OF FLORIDA

ADMINISTRATIVE ORDER NO. 2010-01

IN RE: FORECLOSURE
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 First Judicial Circuit, and state and county budget constraints have limited the ability of the courts in the First Judicial Circuit to manage these cases in a timely manner; and

Whereas, high residential mortgage foreclosure rates are damaging the economies of the counties in the First 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 Collins Center For Public Policy, Inc. 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 First 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 the Collins Center For Public Policy, Inc. to implement and carry out the intent of this Administrative Order.

“The Program Manager” means the Collins Center For Public Policy, Inc., qualified in accordance with parameters attached as Exhibit 12. 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 First 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).

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.*** Residential foreclosure cases referred to mediation pursuant to First Judicial Circuit Administrative Order No. 2009-18 shall continue as required under Administrative Order No. 2009-18 until such time as this administrative order is fully implemented.

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 13 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. A link to the Program Manager's website may be found at www.FirstJudicialCircuit.org.

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 must meet with an approved mortgage foreclosure counselor no later than 30 days after the borrower is initially in contact with the Program Manager. If the borrower fails to timely schedule a meeting with a foreclosure counselor, such failure shall be grounds for the Program Manager to file a notice of nonparticipation as provided in paragraph 9 below. 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. Unless otherwise ordered by the court, a certificate of compliance in the format of Exhibit 12 attached shall be filed with a motion for default final judgment, a motion for summary judgment, or a notice for trial. A copy of the certificate of compliance must accompany the submission of any proposed order for a default final judgment, summary judgment, or final judgment of foreclosure.

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 \$750.00 payable as follows:

- 1) \$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) \$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 \$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 First 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.

Mediators who are on the list of approved mediators maintained by the Program Manager on the date this Administrative Order is signed may continue to mediate cases referred to the RMFM Program, however, such mediators shall not continue working in the RMFM Program if they have not completed the training requirements imposed by paragraph 2 above within ninety (90) days after the effective date of this Administrative Order.

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 First 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 First 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 First Judicial Circuit, takes effect immediately, and will remain in full force and effect unless and until otherwise ordered, and upon complete implementation regarding mediator training shall amend and replace Administrative Orders 2009-18.

ORDERED on _____, 2010.

TERRY D. TERRELL, Chief Judge
First 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

1. FORM A
2. NOTICE OF RMFM PROGRAM TO BE SERVED WITH SUMMONS
3. BORROWER'S REQUEST TO PARTICIPATE IN RMFM PROGRAM
4. NOTICE OF BORROWER'S NONPARTICIPATION
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)
11. ORDERS FOR REFERRALS, COMPLIANCE, AND ENFORCEMENT
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13. MEDIATION TRAINING STANDARDS
14. PARAMETERS FOR MANAGED MEDIATION
15. RMFM PROGRAM FLOWCHART

EXHIBIT 1

FORM A

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

IN THE CIRCUIT COURT IN AND FOR _____ COUNTY, FLORIDA

[Name of Plaintiff]

Plaintiff,

vs.

Case No.:

[Names of Defendant(s)]

Defendant(s)

Form "A"

(Certifications Pursuant to First Judicial Circuit Administrative Order 2010-15)

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 the Collins Center For Public Policy, Inc., 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 FIRST 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 the Collins Center For Public Policy, Inc. by calling 877-352-2004 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.

The Collins Center will explain more about the mediation program to you when you call.

If you have attended mediation arranged by Collins Center 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, First Judicial Circuit

EXHIBIT 3

BORROWER'S REQUEST TO PARTICIPATE IN RMFM PROGRAM

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

Plaintiff(s), Case No(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 FIRST JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

Plaintiff(s), Case No(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: _____ | | |

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 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 and loss statement

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

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)