

Amy Borman

From: Amy Borman
Sent: Wednesday, January 05, 2011 7:27 PM
To: Amy Borman
Subject: FW: 3.302 Revised November.doc
Attachments: 3.302 Revised November.doc

Importance: High

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway
5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
(561) 355-1181 (fax)
ABorman@pbcgov.org

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

From: Amy Borman
Sent: Tuesday, November 17, 2009 2:28 PM
To: Meenu Sasser; Mark Broderick; Amy Stein; Michelle Smith A.; Patricia Balch; Jack Cook; Ed Garrison
Cc: Peter Blanc
Subject: 3.302 Revised November.doc
Importance: High

Please review the revised AO for division AW. The changes are in BOLD.

Mark - I highlighted an area that the clerk's office needs to fill in - just let me know where this document is found.

Please review carefully - Judge Blanc does not want to have to rescind and reissue should an error be found. Please let me know by 5:00 on Wednesday if you have changes. If so, I will recirculate on Thursday so it can be signed on Friday.

I am aware that the signature line needs to be fixed (so that it is not on a page by itself). I will do that once the final language has been approved.

thanks,
Amy

Please be advised that Florida has a broad public records law, and all correspondence to me via email may be subject to disclosure. Under Florida records law (SB80 effective 7-01-06), email addresses are public records. If you do not want your email address released in response to a public records request, do not send public records request to this entity. Instead, contact this office by phone or in writing.

Amy Borman

From: Amy Borman
Sent: Wednesday, January 05, 2011 7:15 PM
To: Amy Borman
Subject: FW: Foreclosure Judgment AO
Attachments: 3 301 Revised Judicial Sales March 2010.docx; Motion to Cancel Foreclosure Sale Exhibit A 3-15 (2).docx; Order on Motion to Cancel Foreclosure Sale Exhibit B 3-15.docx; 3 304 Revised Foreclosure Judgments March 2010 (2).docx; Final Judgment Foreclosure Blank Exhibit A 3-15.docx

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From: Amy Borman
Sent: Wednesday, April 07, 2010 1:19 PM
To: Mark Broderick
Subject: FW: Foreclosure Judgment AO

Mark –

For some reason I cannot remove the watermark. Can you resend without the watermark?

Thanks.

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From: Broderick, Mark [<mailto:MBroderick@mypalmbeachclerk.com>]
Sent: Monday, April 05, 2010 12:50 PM
To: Amy Borman
Cc: Amy Stein
Subject: FW: Foreclosure Judgment AO

Hi A,

Attached are all the two proposed AOs with attachments. I made the changes requested by Judge Sasser to the proposed final judgment (attachment to AO 3.304).

I'm not sure if any more discussion will be held on this. I would suggest moving the start date back a little. I believe the AO (3.301) currently calls for the new process for cancellation to start 4/16. Given that its already 4/5, I think we need to knock it back to the end of the month/early next month to ensure the word can get out.

Let me know if you need anything further from me. Thanks.

From: Meenu Sasser [n
Sent: Tuesday, March 30, 2010 2:02 PM
To: Broderick, Mark
Cc: Borman,Amy
Subject: RE: Foreclosure Judgment AO

Hi Mark: The AO is fine, however, the proposed judgment has to include retention of jurisdiction for the writs of possession (the Supreme Court Final Judgment is incorrect).

Judge Meenu T. Sasser
Circuit Civil Division "AW": Foreclosure
Fifteenth Judicial Circuit of Florida
Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, FL 33401
(561) 355-7817

From: Broderick, Mark [mailto:MBroderick@mypalmbeachclerk.com]
Sent: Monday, March 15, 2010 3:29 PM
To: Meenu Sasser
Cc: Amy Borman
Subject: Foreclosure Judgment AO

Hi Judge Sasser,

Enclosed please find the latest version of the proposed foreclosure judgment AO with exhibit. Thanks.

Mark Broderick
Director - Civil Court Services
MBroderick@mypalmbeachclerk.com

Constitutional Clerk & Comptroller
Serving the Citizens of Palm Beach County
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West Palm Beach, FL 33401
561 355-1641 Direct
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From: Amy Borman
Sent: Wednesday, January 05, 2011 7:33 PM
To: Amy Borman
Subject: FW: final draft of foreclosure AOs and forms
Attachments: 3.301 Revised April Judicial Sales.docx; 3.302 Revised April 2010.doc; 3.304 Revised Foreclosure Judgments April 2010.docx; Final Judgment Foreclosure Blank Exhibit A April.docx; Motion to Cancel Foreclosure Sale Revised April Exhibit A.docx; Order on Motion to Cancel Foreclosure Sale Exhibit B revised April. docx.docx

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From: Amy Borman
Sent: Friday, April 23, 2010 11:02 AM
To: Stefanie Lee
Subject: FW: final draft of foreclosure AOs and forms

Stefanie –

Attached are foreclosure AO's. I sent out a reminder email that I had not heard from anyone since my email below. Therefore, can Judge Blanc sign these for Monday (that way I can still hear this afternoon if there are any last minute changes).

Thanks.

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From: Amy Borman
Sent: Friday, April 09, 2010 12:02 PM
To: Mark Broderick; Amy Stein; Meenu Sasser; Jack Cook; Peter Blanc
Subject: final draft of foreclosure AOs and forms

Attached please find the latest revisions to the foreclosure AO 3.301, 3.302, and 3.304 and the related forms. Because the language in AO 3.301 and 3.304 is all new, the whole AO has been bolded in accordance with procedure. I checked Westlaw this morning and there is still no So.3d citation for the rule changes (therefore it remains a Florida Law Weekly citation). Language relating to sales that was originally in 3.302 (entitled "Foreclosure Division AW) was moved to AO

3.301 (Foreclosure Sales and Cancellation of Sales). Mark and I realized that the language originally should have been in 3.301.

As requested by Mark, I moved the start date back to May 1 and added language that the certificate of sale will not issue until proof of publication has been received. I believe all other changes were already incorporated into the draft that Mark had sent to me last week.

Please review the attached 6 documents and, if possible, let me know by Wednesday of next week if all AO's and forms are acceptable.

Thanks,
Amy

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From: Amy Borman
Sent: Wednesday, January 05, 2011 7:14 PM
To: Amy Borman
Subject: FW: final draft of foreclosure AOs and forms

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From: Amy Borman
Sent: Monday, April 26, 2010 11:22 AM
To: Mark Broderick
Cc: Amy Stein
Subject: RE: final draft of foreclosure AOs and forms

That works for me. I would just let J. Sasser know your thoughts.

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From: Broderick, Mark [<mailto:MBroderick@mypalmbeachclerk.com>]
Sent: Monday, April 26, 2010 11:19 AM
To: Amy Borman
Cc: Amy Stein
Subject: FW: final draft of foreclosure AOs and forms

Hi A,

The reason we had these motions styled as "emergency" motions was to ensure that they would be flagged right away by the clerk's office and brought to the judge (and I believe we had agreed that we wouldn't need to bring the file in these instances). If they were not styled as emergencies, then the motions would be included with all the regular pleadings, which may not be docketed/filed for many days (given the volumes) after receipt.

However, it would appear that this new proposal – to have the attorney bring the motion to UMC hearing and then seemingly drop off any order with the clerk's office, would work well too. If we take this route, shouldn't we incorporate this process into the AO so that attorneys know to bring this type of motion to UMC hearing. Let me know your thoughts. Thanks.

From: Meenu Sasser [r
Sent: Monday, April 26, 2010 10:51 AM
To: Borman, Amy; Broderick, Mark; Stein, Amy; Cook, Jack; Blanc, Peter
Cc: Garrison, Ed
Subject: RE: final draft of foreclosure AOs and forms

Amy: I would respectfully request that the Motions to Cancel sale not be called "Emergency Motions". If they are called "Emergency Motions", the Clerk will need to pull the files and bring them to the signing judges and I am sure that Judge Garrison's folks will not be happy being inundated with these Emergency Motions. Instead, Judge Cook and I are willing to do all the cancellations at UMC (yes—that will make our UMCs even more busy than they currently are but we will handle it).

Otherwise, the proposed AOs look fine.

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Sent: Friday, April 09, 2010 12:02 PM
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Amy Borman

From: Amy Borman
Sent: Wednesday, January 05, 2011 7:26 PM
To: Amy Borman
Subject: FW: final draft of foreclosure AOs and forms
Attachments: Order on Motion to Cancel Foreclosure Sale Exhibit B revised April 29.docx; 3.301 Revised April 29 Judicial Sales.docx; 3.304 Revised Foreclosure Judgments April 2010.docx; Motion to Cancel Foreclosure Sale Revised April 29 Exhibit A.docx; Final Judgment Foreclosure Blank Exhibit A April.docx

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From: Amy Borman
Sent: Thursday, April 29, 2010 12:19 PM
To: Meenu Sasser; Mark Broderick; Amy Stein; Jack Cook; Peter Blanc
Cc: Ed Garrison
Subject: RE: final draft of foreclosure AOs and forms

Ok. I, hopefully, have modified the AO to remove "emergency" and instruct the parties to set on UMC. I ended up removing a few paragraphs. New language is highlighted. Please review and let me know in the next day or two if this meets with everyone's approval.

Thanks.

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From: Meenu Sasser
Sent: Monday, April 26, 2010 11:44 AM
To: Mark Broderick; Amy Borman; Amy Stein; Jack Cook; Peter Blanc
Cc: Ed Garrison
Subject: RE: final draft of foreclosure AOs and forms

Mark: Let's go the latter route and handle all sale cancellations at UMC. Judge Cook and I have been handling dozens of motions to cancel at UMC each week and we have our system in place and it is working well. We will also have consistency and can make sure to inform the attorneys where they need to go in the Clerk's office. Moreover, this way Judge Cook and I can take the responsibility off the Clerk's shoulders to save you some man power as well in "flagging the motions". We want to do whatever we can to help out the Clerk's office.

Further, we also often get Motions to Cancel sale by the pro se defendants at UMC. If we do the Plaintiff's Motions to Cancel at the same time, then we have more uniformity and consistency in the process (rather than having the Circuit Court Judges do the Plaintiff's Motions). We also avoid any errors—last week I had a hearing where a Circuit civil Judge had granted an Order to cancel a sale and the sale had already happened the day before. I had to have a hearing on the sale issue b/c the property was purchased by a 3rd party who objected to the Bank's effort to vacate the sale based on the Circuit Civil Judge's order.

Judge Meenu T. Sasser

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Palm Beach County Courthouse
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From: Broderick, Mark [mailto:MBroderick@mypalmbeachclerk.com]
Sent: Monday, April 26, 2010 11:35 AM
To: Meenu Sasser; Amy Borman; Amy Stein; Jack Cook; Peter Blanc
Cc: Ed Garrison
Subject: RE: final draft of foreclosure AOs and forms

Hi Judge Sasser,

I believe the reason we had these motions styled as "emergency" motions was to ensure that they would be flagged right away by the clerk's office and brought to the judge (and I believe we had agreed that we wouldn't need to bring the file in these instances). If they were not styled as emergencies, then the motions would be included with all the regular pleadings, which may not be docketed/filed for many days (given the volumes) after receipt.

However, it would appear that this new proposal – to have the attorney bring the motion to UMC hearing and then seemingly drop off any order with the clerk's office, would work even better (although it will definitely make for a more chaotic UMC). If we take this route, shouldn't we incorporate this process into the AO so that attorneys know to bring this type of motion directly to the UMC hearing. Let me know your thoughts. Thanks and have a good day.

-Mark

From: Meenu Sasser [mailto:meenu.sasser@pbcclerk.com]
Sent: Monday, April 26, 2010 10:51 AM
To: Borman, Amy; Broderick, Mark; Stein, Amy; Cook, Jack; Blanc, Peter
Cc: Garrison, Ed
Subject: RE: final draft of foreclosure AOs and forms

Amy: I would respectfully request that the Motions to Cancel sale not be called "Emergency Motions". If they are called "Emergency Motions", the Clerk will need to pull the files and bring them to the signing judges and I am sure that Judge Garrison's folks will not be happy being inundated with these Emergency Motions. Instead, Judge Cook and I are willing to do all the cancellations at UMC (yes—that will make our UMCs even more busy than they currently are but we will handle it).

Otherwise, the proposed AOs look fine.

Judge Meenu T. Sasser

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From: Amy Borman
Sent: Wednesday, January 05, 2011 7:25 PM
To: Amy Borman
Subject: FW: final draft of foreclosure AOs and forms
Attachments: Motion to Cancel Foreclosure Sale Revised April 29 Exhibit A.docx

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205 North Dixie Highway
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From: Amy Borman
Sent: Monday, May 03, 2010 5:21 PM
To: Meenu Sasser; Mark Broderick; Amy Stein; Jack Cook; Peter Blanc
Cc: Ed Garrison
Subject: RE: final draft of foreclosure AOs and forms

Exhibit "A" to amended AO 3.301 is a form motion that Mark worked on that we are requiring the attorneys to use. I have attached it again – please make sure it is okay.

I will forward all the documents to Judge Blanc on Tuesday to sign.

Thanks.

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From: Meenu Sasser
Sent: Monday, May 03, 2010 11:16 AM
To: Amy Borman; Mark Broderick; Amy Stein; Jack Cook; Peter Blanc
Cc: Ed Garrison
Subject: RE: final draft of foreclosure AOs and forms

Yes, please reference that there is a form motion (to try to get attorneys to use the form). Otherwise, AO looks good.

From: Amy Borman
Sent: Monday, May 03, 2010 8:41 AM
To: Meenu Sasser; Mark Broderick; Amy Stein; Jack Cook; Peter Blanc

Cc: Ed Garrison

Subject: RE: final draft of foreclosure AOs and forms

Rule 1.996 is mentioned in the intro to revised AO 3.301 (see below). Do you want it somewhere else as well? I can add in the fact that there is a form motion.

It is recognized that routinely 20% to as much as 50% of foreclosure sales scheduled end up canceling just prior to the foreclosure sale being held and that many of these canceled sales are subsequently reset. The compelling interest of efficient and effective case management requires a proper process and procedure be established to orderly handle the cancellation of a foreclosure sale. The Florida Supreme Court has amended the Florida Rules of Civil Procedure to require that an order canceling a foreclosure sale be entered before a foreclosure sale can be canceled and created a form motion to cancel sale. See *In re: Amendments to the Florida Rules of Civil Procedure; In re: Amendments to the Florida Rules of Civil Procedure - Form 1.996 (Final Judgment of Foreclosure)*, 35 Fla. L. Weekly S97 (Fla. Feb. 11, 2010).

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From: Meenu Sasser
Sent: Thursday, April 29, 2010 3:22 PM
To: Amy Borman; Mark Broderick; Amy Stein; Jack Cook; Peter Blanc
Cc: Ed Garrison
Subject: RE: final draft of foreclosure AOs and forms

Amy: I have another suggestion. Can you please make reference to the new Supreme Court Rule 1.996, which includes a form motion to cancel sale?

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chaotic UMC). If we take this route, shouldn't we incorporate this process into the AO so that attorneys know to bring this type of motion directly to the UMC hearing. Let me know your thoughts. Thanks and have a good day.

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From: Amy Borman
Sent: Monday, May 03, 2010 6:48 PM
To: Meenu Sasser; Mark Broderick; Amy Stein; Jack Cook; Peter Blanc
Cc: Ed Garrison; Stefanie Lee
Subject: RE: final draft of foreclosure AOs and forms

Stefanie –

Attached please find the following:

Amended AO 3.301 (Foreclosure Sales and Cancellation of Sales)
Exhibit A to 3.301 (Motion to Cancel Sale)
Exhibit B to 3.301 (Order on Motion to Cancel Sale)
Amended AO 3.302 (Foreclosure Division AW)
Amended AO 3.304 (Foreclosure Judgments)
Exhibit A to 3.304 (Final Judgment)

It would be most appreciated if you could have Judge Blanc sign these on Tuesday or Wednesday.

Thanks,
Amy

Amy S. Borman
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From: Meenu Sasser
Sent: Monday, May 03, 2010 5:40 PM
To: Amy Borman; Mark Broderick; Amy Stein; Jack Cook; Peter Blanc
Cc: Ed Garrison
Subject: RE: final draft of foreclosure AOs and forms

Thanks, Amy and Mark. I have been doing dozens of Motions to Cancel each day at UMC and many of the law firms are already using this form Motion to Cancel.

Please let me know when Judge Blanc signs the Order so I can advise the attorneys. We should also have Noel send the executed AO out to all of our over 700 registered law firms for Division AW via email as well.

Judge Meenu T. Sasser
Circuit Civil Division "AW": Foreclosure
Fifteenth Judicial Circuit of Florida
Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, FL 33401
(561) 355-7817

From: Amy Borman
Sent: Monday, May 03, 2010 5:21 PM
To: Meenu Sasser; Mark Broderick; Amy Stein; Jack Cook; Peter Blanc
Cc: Ed Garrison
Subject: RE: final draft of foreclosure AOs and forms

Exhibit "A" to amended AO 3.301 is a form motion that Mark worked on that we are requiring the attorneys to use. I have attached it again – please make sure it is okay.

I will forward all the documents to Judge Blanc on Tuesday to sign.

Thanks.

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From: Meenu Sasser
Sent: Monday, May 03, 2010 11:16 AM
To: Amy Borman; Mark Broderick; Amy Stein; Jack Cook; Peter Blanc
Cc: Ed Garrison
Subject: RE: final draft of foreclosure AOs and forms

Yes, please reference that there is a form motion (to try to get attorneys to use the form). Otherwise, AO looks good.

From: Amy Borman
Sent: Monday, May 03, 2010 8:41 AM
To: Meenu Sasser; Mark Broderick; Amy Stein; Jack Cook; Peter Blanc

Cc: Ed Garrison

Subject: RE: final draft of foreclosure AOs and forms

Rule 1.996 is mentioned in the intro to revised AO 3.301 (see below). Do you want it somewhere else as well? I can add in the fact that there is a form motion.

It is recognized that routinely 20% to as much as 50% of foreclosure sales scheduled end up canceling just prior to the foreclosure sale being held and that many of these canceled sales are subsequently reset. The compelling interest of efficient and effective case management requires a proper process and procedure be established to orderly handle the cancellation of a foreclosure sale. The Florida Supreme Court has amended the Florida Rules of Civil Procedure to require that an order canceling a foreclosure sale be entered before a foreclosure sale can be canceled and created a form motion to cancel sale. See *In re: Amendments to the Florida Rules of Civil Procedure; In re: Amendments to the Florida Rules of Civil Procedure - Form 1.996 (Final Judgment of Foreclosure)*, 35 Fla. L. Weekly S97 (Fla. Feb. 11, 2010).

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From: Meenu Sasser
Sent: Thursday, April 29, 2010 3:22 PM
To: Amy Borman; Mark Broderick; Amy Stein; Jack Cook; Peter Blanc
Cc: Ed Garrison
Subject: RE: final draft of foreclosure AOs and forms

Amy: I have another suggestion. Can you please make reference to the new Supreme Court Rule 1.996, which includes a form motion to cancel sale?

Judge Meenu T. Sasser
Circuit Civil Division "AW": Foreclosure
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Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, FL 33401
(561) 355-7817

From: Amy Borman
Sent: Thursday, April 29, 2010 12:19 PM
To: Meenu Sasser; Mark Broderick; Amy Stein; Jack Cook; Peter Blanc
Cc: Ed Garrison
Subject: RE: final draft of foreclosure AOs and forms

Ok. I, hopefully, have modified the AO to remove "emergency" and instruct the parties to set on UMC. I ended up removing a few paragraphs. New language is highlighted. Please review and let me know in the next day or two if this meets with everyone's approval.

Thanks.

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From: Meenu Sasser
Sent: Monday, April 26, 2010 11:44 AM
To: Mark Broderick; Amy Borman; Amy Stein; Jack Cook; Peter Blanc
Cc: Ed Garrison
Subject: RE: final draft of foreclosure AOs and forms

Mark: Let's go the latter route and handle all sale cancellations at UMC. Judge Cook and I have been handling dozens of motions to cancel at UMC each week and we have our system in place and it is working well. We will also have consistency and can make sure to inform the attorneys where they need to go in the Clerk's office. Moreover, this way Judge Cook and I can take the responsibility off the Clerk's shoulders to save you some man power as well in "flagging the motions". We want to do whatever we can to help out the Clerk's office.

Further, we also often get Motions to Cancel sale by the pro se defendants at UMC. If we do the Plaintiff's Motions to Cancel at the same time, then we have more uniformity and consistency in the process (rather than having the Circuit Court Judges do the Plaintiff's Motions). We also avoid any errors—last week I had a hearing where a Circuit civil Judge had granted an Order to cancel a sale and the sale had already happened the day before. I had to have a hearing on the sale issue b/c the property was purchased by a 3rd party who objected to the Bank's effort to vacate the sale based on the Circuit Civil Judge's order.

Judge Meenu T. Sasser
Circuit Civil Division "AW": Foreclosure
Fifteenth Judicial Circuit of Florida
Palm Beach County Courthouse
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West Palm Beach, FL 33401
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From: Broderick, Mark [mailto:MBroderick@mypalmbeachclerk.com]
Sent: Monday, April 26, 2010 11:35 AM
To: Meenu Sasser; Amy Borman; Amy Stein; Jack Cook; Peter Blanc
Cc: Ed Garrison
Subject: RE: final draft of foreclosure AOs and forms

Hi Judge Sasser,

I believe the reason we had these motions styled as "emergency" motions was to ensure that they would be flagged right away by the clerk's office and brought to the judge (and I believe we had agreed that we wouldn't need to bring the file in these instances). If they were not styled as emergencies, then the motions would be included with all the regular pleadings, which may not be docketed/filed for many days (given the volumes) after receipt.

However, it would appear that this new proposal – to have the attorney bring the motion to UMC hearing and then seemingly drop off any order with the clerk's office, would work even better (although it will definitely make for a more

chaotic UMC). If we take this route, shouldn't we incorporate this process into the AO so that attorneys know to bring this type of motion directly to the UMC hearing. Let me know your thoughts. Thanks and have a good day.

-Mark

From: Meenu Sasser [mailto:]
Sent: Monday, April 26, 2010 10:51 AM
To: Borman, Amy; Broderick, Mark; Stein, Amy; Cook, Jack; Blanc, Peter
Cc: Garrison, Ed
Subject: RE: final draft of foreclosure AOs and forms

Amy: I would respectfully request that the Motions to Cancel sale not be called "Emergency Motions". If they are called "Emergency Motions", the Clerk will need to pull the files and bring them to the signing judges and I am sure that Judge Garrison's folks will not be happy being inundated with these Emergency Motions. Instead, Judge Cook and I are willing to do all the cancellations at UMC (yes—that will make our UMCs even more busy than they currently are but we will handle it).

Otherwise, the proposed AOs look fine.

Judge Meenu T. Sasser
Circuit Civil Division "AW": Foreclosure
Fifteenth Judicial Circuit of Florida
Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, FL 33401
(561) 355-7817

From: Amy Borman
Sent: Friday, April 09, 2010 12:02 PM
To: Mark Broderick; Amy Stein; Meenu Sasser; Jack Cook; Peter Blanc
Subject: final draft of foreclosure AOs and forms

Attached please find the latest revisions to the foreclosure AO 3.301, 3.302, and 3.304 and the related forms. Because the language in AO 3.301 and 3.304 is all new, the whole AO has been bolded in accordance with procedure. I checked Westlaw this morning and there is still no So.3d citation for the rule changes (therefore it remains a Florida Law Weekly citation). Language relating to sales that was originally in 3.302 (entitled "Foreclosure Division AW) was moved to AO 3.301 (Foreclosure Sales and Cancellation of Sales). Mark and I realized that the language originally should have been in 3.301.

As requested by Mark, I moved the start date back to May 1 and added language that the certificate of sale will not issue until proof of publication has been received. I believe all other changes were already incorporated into the draft that Mark had sent to me last week.

Please review the attached 6 documents and, if possible, let me know by Wednesday of next week if all AO's and forms are acceptable.

Thanks,
Amy

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Amy Borman

From: Amy Borman
Sent: Wednesday, January 05, 2011 7:23 PM
To: Amy Borman
Subject: FW: Motions to Cancel Sale
Attachments: 3.301 Revised June Judicial Sales.docx

Amy S. Borman
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From: Amy Borman
Sent: Monday, June 14, 2010 3:42 PM
To: Meenu Sasser; Jack Cook
Cc: Mark Broderick; Karen Heidtman; Michelle Leyva J.
Subject: RE: Motions to Cancel Sale

I drafted some language that addresses the concerns of the 5th DCA as well as the HAMP requirements. Please review the attached draft AO – new language is in bold – and let me know your thoughts.

The Text of the 5th DCA case that came out last week is below:

35 Fla. L. Weekly D1256c

Mortgage foreclosure -- Trial court abused discretion by denying mortgagee's unopposed motions to cancel foreclosure sale and to vacate foreclosure sale which alleged that parties had reached a loan modification agreement -- It was improper to deny motions on basis of the failure to attach a stipulation or copy of the loan modification or forbearance agreement signed by all parties

WELLS FARGO BANK, N.A. AS TRUSTEE, etc., Appellant, v. CARL T. LUPICA AND MARGARET LUPICA, Appellees. 5th District. Case No. 5D09-2902. Opinion filed June 4, 2010. Appeal from the Circuit Court for Volusia County, John V. Doyle, Judge. Counsel: Richard S. McIver, of Kass, Shuler, Solomon, Spector, Foyle & Singer, P.A. Tampa, for Appellant. No Appearance for Appellee.

(EVANDER, J.) Wells Fargo appeals from the denial of its unopposed motion to cancel foreclosure sale and its subsequent unopposed motion to vacate the foreclosure sale. Because we find that the denial of these motions constituted a gross abuse of discretion, we reverse.

Wells Fargo filed a mortgage foreclosure action against the Lupicas, based on their alleged failure to make due and owing monthly installment payments. No answer was filed by the Lupicas and a final summary judgment was subsequently entered in favor of Wells Fargo. Shortly prior to the scheduled foreclosure sale, Wells Fargo filed a motion to cancel sale, alleging that the parties had reached a loan modification agreement. The motion was denied by stamping the word "Denied" on the face of the motion. Wells Fargo purchased the mortgaged property at the foreclosure sale for \$100 and then filed an unopposed motion to vacate sale, stating that the parties had reached a forbearance agreement. The trial court again denied the motion by use of a "Denied" stamp.

When Wells Fargo initially appealed the denial of these motions, we were compelled to relinquish jurisdiction to the trial court because the trial court's action did not constitute "rendition" of a final order so as to permit appellate review. *Wells Fargo Bank, N.A. v. Lupica*, 17 So. 3d 864 (Fla. 5th DCA 2009). We further directed the trial court to provide the basis for its denials of Wells Fargo's motion to cancel sale and subsequent motion to vacate sale. *Id.* at 866.

The trial court then entered a final order denying the motions. The purported basis for the denial of Wells Fargo's two unopposed motions was the failure to attach a stipulation and/or a copy of the loan modification or forbearance agreement signed by all parties. The trial judge further suggested that the parties should have discussed the modification of the loan prior to entry of the final judgment "which could have avoided unnecessary consumption of the time of two courts."

Foreclosures are equitable proceedings under Florida law and settlements between litigants are favored. The trial court's denial of Wells Fargo's unopposed motions flies in the face of these principles. Furthermore, it was not necessary for Wells Fargo to have attached a stipulation and/or copy of a signed loan modification or forbearance agreement.¹ There was no basis for the trial court to reject Wells Fargo's counsel's representation, as an officer of the court, that an agreement had been reached between the parties -- particularly where the Lupicas never disputed such representation. The trial court's actions constituted a gross abuse of discretion. *See, e.g., Opportunity Funding I, LLC v. Otetchestvennyi*, 909 So. 2d 361 (Fla. 4th DCA 2005).

REVERSED and REMANDED. (GRIFFIN and SAWAYA, JJ., concur.)

¹Subsequent to the trial court's entry of its final order, the Florida Supreme Court approved a form motion for the cancellation of a foreclosure sale:

Form 1.996(b). Motion to Cancel and Reschedule Foreclosure Sale.

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

* * *

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

* * *

(f) Plaintiff and Defendant have entered into a Forbearance Agreement.

In re Amends. to the Fla. Rules of Civil Proc., 35 Fla. L. Weekly S97 (Fla. Feb. 11, 2010). The form motion does not reference the attachment of a stipulation or copy of a forbearance agreement.

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From: Meenu Sasser
Sent: Friday, June 11, 2010 9:47 AM
To: Amy Borman; Jack Cook
Cc: Mark Broderick
Subject: FW: Motions to Cancel Sale

Amy: Your thoughts on this issue in light of the new AO? Also, I read that 5th DCA opinion last night overruling the Judge who refused to cancel the sale. I just wanted to make sure our AO was o.k. in light of that case (ie we are willing to cancel the sales, however, we require the 7 days advance notice).

Judge Meenu T. Sasser
Circuit Civil Division "AW": Foreclosure
Fifteenth Judicial Circuit of Florida

Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, FL 33401
(561) 355-7817

From: Patricia Balch
Sent: Friday, June 11, 2010 9:33 AM
To: Meenu Sasser
Subject: FW: Motions to Cancel Sale

Judge Sasser:

See email below, the AO says to cancel and reschedule the sale. They just want to cancel and not reschedule.

Thanks
Pat

From: Amy Weaver [mailto:aweaver@LOGS.com]
Sent: Thursday, June 10, 2010 5:14 PM
To: Patricia Balch
Cc: Cristina Wilkinson; Celeste Batton
Subject: Motions to Cancel Sale

Hi Pat!

I have a question about Motions to Cancel Sale. I know Judge Sasser's new administrative order states that we must file the Motion to Cancel Sale 7 business days before the sale in order to have it canceled. We are running into the problem with the HAMP modifications (the Obama modification program).

Federal guidelines say that the foreclosure action should be placed on hold while the borrowers are being reviewed for a HAMP modification. Sometimes the review process does not start until a few days before the sale, which creates a problem since we are not given enough time to comply with the administrative order.

Is it possible to ask Judge Sasser if HAMP modifications are an exception to her order? I just don't want to upset the Judge by filing the motions to cancel sale a few days before the sale, and I also do not want to go against federal guidelines. Can you help me out?

Amy Weaver

Attorney - Foreclosure
561-998-6700 Office
561-998-6707 Fax
aweaver@LOGS.com | www.logs.com

Clapiro & Fishman, L.L.P. | 2424 N. Federal Highway, Suite 300 | Boca Raton, FL 33431

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This email, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me at 561-998-6700 and permanently delete the original and any copy of any e-mail and any printout thereof.

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addresses are public records. If you do not want your email address released in response to a public records request, do not send public records request to this entity. Instead, contact this office by phone or in writing.

Amy Borman

From: Amy Borman
Sent: Wednesday, January 05, 2011 7:09 PM
To: Amy Borman
Subject: FW: question

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway
5th Floor
West Palm Beach, Florida 33401
(561) 355-1927 (direct line)
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ABorman@pbcgov.org

From: Amy Borman
Sent: Tuesday, July 06, 2010 12:40 PM
To: Peter Blanc
Subject: FW: question

FYI

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5th Floor
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ABorman@pbcgov.org

From: Broderick, Mark [<mailto:MBroderick@mypalmbeachclerk.com>]
Sent: Monday, July 05, 2010 10:14 PM
To: Amy Borman
Cc: Karen Heidtman; Amy Stein
Subject: RE: question

Hi A,

The system cannot assign cases between odd and even case numbers, but we could set up a new division for foreclosure case types, and the system would randomly and equally assign to divisions AX and AW (this would also be subject to the other limitation which I believe you are aware of that the case counters for the system reset monthly).

What are you all contemplating for the foreclosure division.

From: Amy Borman [ABorman@pbcgov.org]
Sent: Friday, July 02, 2010 12:09 PM
To: Broderick, Mark
Cc: Heidtman, Karen; Stein, Amy
Subject: question

Hi...I have a question. How difficult would it be for a new Division "AX" be created for foreclosure? Odd cases to AX, even cases to AW.

Please let me know. Have a great long weekend!

Thanks,

amy

Amy S. Borman

General Counsel

15th Judicial Circuit

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records request, do not send public records request to this entity. Instead, contact this office by phone or in writing.

Amy Borman

From: Amy Borman
Sent: Wednesday, January 05, 2011 7:17 PM
To: Amy Borman
Subject: FW: Div AV

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway
5th Floor
West Palm Beach, Florida 33401
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(561) 355-1181 (fax)
ABorman@pbcgov.org

From: Amy Borman
Sent: Thursday, July 29, 2010 11:37 AM
To: Michelle Leyva J.; Barbara Dawicke; Shilpa Vuppalanchi
Subject: RE: Div AV

Works for me.

From: Michelle Leyva J.
Sent: Thursday, July 29, 2010 11:36 AM
To: Amy Borman; Barbara Dawicke; Shilpa Vuppalanchi
Subject: RE: Div AV

Shilpa:

Perhaps we can leave it as the AW division had initially indicated "Judge" so that we can leave the judicial title ambiguous, but we would still be able to satisfy the AO requirements of senior judge-staffed. Barbara/Amy, would that work for you?

MJL

From: Amy Borman
Sent: Thursday, July 29, 2010 11:33 AM
To: Barbara Dawicke; Shilpa Vuppalanchi
Cc: Michelle Leyva J.
Subject: RE: Div AV

That is what the AO states. Senior Judges generally.

From: Barbara Dawicke
Sent: Thursday, July 29, 2010 11:32 AM
To: Amy Borman; Shilpa Vuppalanchi
Cc: Michelle Leyva J.
Subject: RE: Div AV

No, it should not show that the Division is assigned to a senior judge.

From: Amy Borman
Sent: Thursday, July 29, 2010 11:31 AM
To: Shilpa Vuppalanchi
Cc: Michelle Leyva J.; Barbara Dawicke
Subject: RE: Div AV

Senior Judge display is fine. I will defer to Barbara and Michelle Leyva on the courtroom.

Amy S. Borman
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aborman@pbcgov.org

From: Shilpa Vuppalanchi
Sent: Thursday, July 29, 2010 10:47 AM
To: Amy Borman
Subject: Div AV

What Court Room should Div AV be in ?? I have to set it up in Banner.
Also, the Judge will be displayed as Senior Judge. Is that ok?

Please be advised that Florida has a broad public records law, and all correspondence to me via email may be subject to disclosure. Under Florida records law (SB80 effective 7-01-06), email addresses are public records. If you do not want your email address released in response to a public records request, do not send public records request to this entity. Instead, contact this office by phone or in writing.

Amy Borman

From: Amy Borman
Sent: Wednesday, January 05, 2011 7:17 PM
To: Amy Borman
Subject: FW: Div AV

Amy S. Borman
General Counsel
15th Judicial Circuit
205 North Dixie Highway
5th Floor
West Palm Beach, Florida 33401
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From: Amy Borman
Sent: Thursday, July 29, 2010 11:37 AM
To: Michelle Leyva J.; Barbara Dawicke; Shilpa Vuppalanchi
Subject: RE: Div AV

Works for me.

From: Michelle Leyva J.
Sent: Thursday, July 29, 2010 11:36 AM
To: Amy Borman; Barbara Dawicke; Shilpa Vuppalanchi
Subject: RE: Div AV

Shilpa:

Perhaps we can leave it as the AW division had initially indicated "Judge" so that we can leave the judicial title ambiguous, but we would still be able to satisfy the AO requirements of senior judge-staffed. Barbara/Amy, would that work for you?

MJL

From: Amy Borman
Sent: Thursday, July 29, 2010 11:33 AM
To: Barbara Dawicke; Shilpa Vuppalanchi
Cc: Michelle Leyva J.
Subject: RE: Div AV

That is what the AO states. Senior Judges generally.

From: Barbara Dawicke
Sent: Thursday, July 29, 2010 11:32 AM
To: Amy Borman; Shilpa Vuppalanchi
Cc: Michelle Leyva J.
Subject: RE: Div AV

No, it should not show that the Division is assigned to a senior judge.

From: Amy Borman
Sent: Thursday, July 29, 2010 11:31 AM
To: Shilpa Vuppalanchi
Cc: Michelle Leyva J.; Barbara Dawicke
Subject: RE: Div AV

Senior Judge display is fine. I will defer to Barbara and Michelle Leyva on the courtroom.

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From: Shilpa Vuppalanchi
Sent: Thursday, July 29, 2010 10:47 AM
To: Amy Borman
Subject: Div AV

What Court Room should Div AV be in ?? I have to set it up in Banner.
Also, the Judge will be displayed as Senior Judge. Is that ok?

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