

**Arlene Huszar**

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**From:** Judge Martha Lott  
**Sent:** Friday, October 01, 2010 9:21 AM  
**To:** Judge Robert Roundtree, Jr.; Paul Silverman; Judge Phyllis Rosier; Judge Stan Griffis; Judge Victor Hulslander; Judge Toby Monaco  
**Cc:** Ted McFetridge  
**Subject:** RE: process servers

The burden is in the application, screening, bonding, education, review...etc. It has to be maintained and redone annually. The time is invisible to the judges and we may lose other court admin services if this becomes our priority but I am not opposed to looking at it. It could be done and is being done in other circuits. The added and continuing burdens on court administration are just like the added and continuing burdens that are placed on the judiciary...they come up without any increase in resources. Let's continue the discussion until we as judges are clear on what we need to make the system work. If we conclude that this is where the resources should be expended., then we will look at what would have to be cut out to get it done and weigh the priorities.

Martha Ann Lott  
Chief Judge

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**From:** Judge Robert Roundtree, Jr.  
**Sent:** Wednesday, September 29, 2010 8:50 PM  
**To:** Judge Martha Lott; Paul Silverman; Judge Phyllis Rosier; Judge Stan Griffis; Judge Victor Hulslander; Judge Toby Monaco  
**Cc:** Ted McFetridge  
**Subject:** Re: process servers

In my opinion, the sheriff's office would never get the foreclosures served. It would greatly slow down our foreclosures. I don't care if plaintiff's use a process server to make the case go smoother, I don't always tax that cost though. How does it burdens court administration once the list is approved? The would never see the summonses.

On 9/29/10 4:02 PM, "[lottma@circuit8.org](mailto:lottma@circuit8.org)" <[lottma@circuit8.org](mailto:lottma@circuit8.org)> wrote:

We have been looking into it. It shifts quite a burden to court administration so it is a transfer not an avoidance. The Sheriff's in our circuit prefer to keep process service in house except when needed. The deputies have specific training and supervision. Appointed process servers come with quite a range of training and professionalism. Is there a real need for special process servers? Upon setting them for hearing in Union Co, I have learned much about the pros and cons.

Sent on the Sprint® Now Network from my BlackBerry®

**From:** "Judge Robert Roundtree, Jr." <[RoundtreeR@circuit8.org](mailto:RoundtreeR@circuit8.org)>  
**Date:** Wed, 29 Sep 2010 11:54:22 -0400  
**To:** Paul Silverman<[silvermanp@circuit8.org](mailto:silvermanp@circuit8.org)>  
**Cc:** Judge Martha Lott<[LottMA@circuit8.org](mailto:LottMA@circuit8.org)>  
**Subject:** RE: process servers

I am not aware we have them but it would make the civil judges' and JA's lives less hectic if we didn't have to constantly sign those along with the tons of other stuff we sign. Thank for looking into this.

---

**From:** Paul Silverman  
**Sent:** Wednesday, September 29, 2010 11:53 AM

**To:** Judge Robert Roundtree, Jr.  
**Subject:** process servers

Judge Roundtree:

Kathy mentioned that you asked if I'd look into whether I could sign to appoint process servers in foreclosure cases.

I don't believe that I can sign without you signing as well, but I think we can use Fla.Stat. 48.27 to avoid anyone having to sign. The statute allows the chief judge to keep a list of approved process servers, and as best as I can tell, if someone is on the list, then an Order wouldn't be required. If asked the staff attorneys if they knew if we had such a list for our circuit and they weren't aware of one.

Do you know if we have one? If not, I can speak with Judge Lott and see if we can get one started. Once we have it available, we can advise the Plaintiffs firms that their process servers need to be on our list in order to serve process in our circuit, and that should dispense with the need for Motions and Order...its a win, win.

Paul

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**From:** Judge Robert Roundtree, Jr.  
**Sent:** Friday, October 01, 2010 10:41 AM  
**To:** Judge Martha Lott; Paul Silverman; Judge Phyllis Rosier; Judge Stan Griffis; Judge Victor Hulslander; Judge Toby Monaco  
**Cc:** Ted McFetridge  
**Subject:** Re: process servers

I don't see the big deal? Judges routinely sign orders appointing them without any of that. How would suddenly a list of approved process servers bring on all that work?

On 10/1/10 9:21 AM, "Judge Martha Lott" <[LottMA@circuit8.org](mailto:LottMA@circuit8.org)> wrote:

The burden is in the application, screening, bonding, education, review...etc. It has to be maintained and redone annually. The time is invisible to the judges and we may lose other court admin services if this becomes our priority but I am not opposed to looking at it. It could be done and is being done in other circuits. The added and continuing burdens on court administration are just like the added and continuing burdens that are placed on the judiciary...they come up without any increase in resources. Let's continue the discussion until we as judges are clear on what we need to make the system work. If we conclude that this is where the resources should be expended., then we will look at what would have to be cut out to get it done and weigh the priorities.

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Paul

## Arlene Huszar

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**From:** Judge Martha Lott  
**Sent:** Wednesday, November 17, 2010 1:11 PM  
**To:** Ted McFetridge  
**Subject:** FW: Mortgage Foreclosure Proceedings  
**Attachments:** Memo to Chief Judges re Mortgage Foreclosure Proceedings.pdf; Letter to Florida Press Assn et al.pdf

To all judges: A current issue being addressed by the court and by the media is openness of court proceedings to the public. As you know, with some exceptions all court proceedings are open to the public. We do have some very real logistical issues in complying. We do the following:

All foreclosures proceedings in Alachua County handled by magistrate Paul Silverman are conducted in a courtroom and are open to the public. If we have advance notice that the public has an interest in a particular case or type of proceedings we can make every reasonable effort to schedule that event in a courtroom with sufficient capacity, ie. 4A. If members of the public want to observe a proceeding in chambers, they of course are allowed subject to the limited seating available at the back of the hearing room and subject to our ability to have reasonable security in place. ie call for an unscheduled deputy. We would only close a proceeding when statutorily mandated and we would only limit access based on seats available, fire codes, security, etc.

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**From:** Debbie Howells [mailto:[howellsd@flcourts.org](mailto:howellsd@flcourts.org)]  
**Sent:** Wednesday, November 17, 2010 8:03 AM  
**To:** Trial Court Chief Judges  
**Cc:** Trial Court Administrators; Lisa Goodner; Blan Teagle; Laura Rush; Kristine Slayden; Brenda Johnson; Judge John Laurent  
**Subject:** Mortgage Foreclosure Proceedings

Please see the attached memorandum from Chief Justice Canady regarding mortgage foreclosure proceedings.

Also attached is a copy of Chief Justice Canady's letter to The Florida Press Association.

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

## Arlene Huszar

---

**From:** Michael Rodriguez <rodrigum@flcourts.org>  
**Sent:** Monday, November 15, 2010 12:23 PM  
**To:** Mary Lou Gardner  
**Cc:** Theresa Westerfield; Dorothy Wilson; Ted McFetridge; Judge Martha Lott  
**Subject:** Budget Amendment Request Processed - 8th Circuit  
**Attachments:** doc00099920101007103153.pdf

Mary Lou,

The attached budget amendment request has been processed. You may view the transfer through AB checking today, but the transfer will not reflect on your FLAIR reports until tomorrow, after tonight's system refresh. If you have any questions about this budget amendment, please contact me.

Regards,

**Michael J. Rodríguez**

Budget Analyst  
Supreme Court of Florida  
Office of the State Court Administrator  
500 South Duval Street  
Tallahassee, Florida 32399-1900  
Office: (850) 922-6024 Fax: (850) 487-0664

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**From:** Mary Lou Gardner [mailto:GardnerM@circuit8.org]  
**Sent:** Thursday, October 07, 2010 10:51 AM  
**To:** Dorothy Wilson  
**Cc:** Ted McFetridge; Judge Martha Lott  
**Subject:** Trial Court Budget Amendment Foreclosure & Economic Recovery Program

Good Morning Dorothy,

Attached is the above Eighth Judicial Circuit Budget Amendment for the Foreclosure & Economic Recovery Program. Thank you for your assistance with this request.

Mary Lou Gardner, Administrative Services Manager  
Alachua County Family & Civil Justice Center  
201 East University Avenue, Room 410  
Gainesville, FL 32601  
(352) 491-4490  
(352) 374-5238  
[gardnerm@circuit8.org](mailto:gardnerm@circuit8.org)

**Arlene Huszar**

---

**To:** Judge Martha Lott; Judge Robert Roundtree, Jr.  
**Subject:** RE: TCBC Conference Call re: foreclosure plan

I asked Paul to sit in and listen to the meeting with the

**From:** Judge Martha Lott  
**Sent:** Wednesday, October 27, 2010 9:57 AM  
**To:** Judge Robert Roundtree, Jr.; Ted McFetridge  
**Subject:** RE: TCBC Conference Call re: foreclosure plan

All I see is the brief agenda. Are you thinking Paul may want to call in?

Martha Ann Lott  
Chief Judge

**From:** Judge Robert Roundtree, Jr.  
**Sent:** Wednesday, October 27, 2010 9:50 AM  
**To:** Judge Martha Lott; Ted McFetridge  
**Subject:** FW: TCBC Conference Call re: foreclosure plan

FYI. Do you think I should also send a copy to Paul Silverman?

**From:** Sue Bruce [mailto:bruces@flicourts.org]  
**Sent:** Wednesday, October 27, 2010 9:32 AM  
**To:** Trial Court Budget Commission  
**Cc:** OSCA-Trial Court Budget Commision Staff; Debra Nelson  
**Subject:** TCBC Conference Call

The materials for today's TCBC conference call are attached. Reminder - The number to call is 1-888-808-6959, then enter 4641332#.

***Sue Bruce***

Personal Secretary II  
Office of the State Courts Administrator  
500 S. Duval Street  
Tallahassee, FL 32399  
Phone: 850/922-5081  
Fax: 850/488-0156

**Arlene Huszar**

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**From:** Judge Martha Lott  
**Sent:** Wednesday, October 27, 2010 9:57 AM  
**To:** Judge Robert Roundtree, Jr.; Ted McFetridge  
**Subject:** RE: TCBC Conference Call re: foreclosure plan

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Martha Ann Lott  
Chief Judge

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**From:** Sue Bruce [mailto:bruces@flcourts.org]  
**Sent:** Wednesday, October 27, 2010 9:32 AM  
**To:** Trial Court Budget Commission  
**Cc:** OSCA-Trial Court Budget Commission Staff; Debra Nelson  
**Subject:** TCBC Conference Call

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***Sue Bruce***

Personal Secretary II  
Office of the State Courts Administrator  
500 S. Duval Street  
Tallahassee, FL 32399  
Phone: 850/922-5081  
Fax: 850/488-0156



**Arlene Huszar**

---

**From:** Debbie Howells <howellsd@flcourts.org>  
**Sent:** Monday, October 18, 2010 1:52 PM  
**To:** Trial Court Chief Judges; Judge Kevin M. Emas  
**Cc:** Trial Court Administrators; Judge Jennifer Bailey; Lisa Goodner; Brenda Johnson; Blane Teagle; Laura Rush; Greg Youchock; Greg Smith; Kristine Slayden; Charlotte Jerrett; Gary Phillips; Judge John Laurent; Judge Wayne Miller  
**Subject:** Nov. 15 JAC Conference Call

Chief Judge Lee Haworth, Chair of the Judicial Administration Committee, asked us to let you know that a conference call has been scheduled for 12:00 noon on Monday, November 15, 2010. Discussion items will include mortgage foreclosure issues and other matters. To participate in the call, please dial 1-888-808-6959 and, when prompted, enter conference code 9425056 followed by the # key. An agenda and additional information will be provided prior to the call.

Sincerely,

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

**Arlene Huszar**

---

**From:** Mary Lou Gardner  
**Sent:** Monday, October 18, 2010 10:48 AM  
**To:** 'wilsond@flcourts.org'  
**Cc:** Ted McFetridge; Judge Martha Lott  
**Subject:** FW: Trial Court Budget Amendment Foreclosure & Economic Recovery Program  
**Attachments:** doc00099920101007103153.pdf

Good Morning Dorothy,

This is just a follow-up of the e-mail that was sent on October 7<sup>th</sup> requesting that the attached budget amendment be processed. Please let us know what date this will go the TCBC and if it is approved, what date it will go to the Legislature. Thank you.

---

**From:** Mary Lou Gardner  
**Sent:** Thursday, October 07, 2010 10:51 AM  
**To:** 'wilsond@flcourts.org'  
**Cc:** Ted McFetridge; Judge Martha Lott  
**Subject:** Trial Court Budget Amendment Foreclosure & Economic Recovery Program

Good Morning Dorothy,

Attached is the above Eighth Judicial Circuit Budget Amendment for the Foreclosure & Economic Recovery Program. Thank you for your assistance with this request.

Mary Lou Gardner, Administrative Services Manager  
Alachua County Family & Civil Justice Center  
201 East University Avenue, Room 410  
Gainesville, FL 32601  
(352) 491-4490  
(352) 374-5238  
[gardnem@circuit8.org](mailto:gardnem@circuit8.org)

Office of the State Courts Administrator  
Office of Budget Services

Trial Court - Budget Amendment Request Form					
page of	Org Code	Cost Center Title	Category Code	Category Title	Amount
From	22-20-08-00-375	Foreclosure & Economic Recovery Prog.	100630	Senior Judge Days	-8,750.00
To	22-20-08-00-375	Foreclosure & Economic Recovery Prog.	100777	Contracted Services	8,750.00
From					
To					
From					
To					
From					
To					
From					
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To					

The Eighth Judicial Circuit Foreclosure and Economic Recovery Program has contracted with a General Magistrate to oversee the case management and hear foreclosure cases. We have found that we can make better use of the time and money allocated for foreclosure cases by having a magistrate hear them rather than a senior judge. As a small circuit, we do not have the large number of foreclosure cases that are filed in the larger circuits. It is not possible to schedule a full day of hearings for a senior judge. When we use a Senior Judge, he must be paid for a full day at the rate of \$350 per day, regardless of the number of hours worked. If this budget amendment is granted, the Program would retain 25 of the 50 Senior Judge Days in the original allotment. The approval of this budget amendment would give the Program the flexibility of paying for only hours worked. The additional hours spent by the General Magistrate working with the Administrative Support OPS position on case management, will result in a higher number of cases heard and resolved.

Requestor Signature:  Date: October 7/2010

BUDGET OFFICE USE ONLY:

Date Request Received: \_\_\_\_\_ Date Approved by Legislature: \_\_\_\_\_

Analyst Assigned To: \_\_\_\_\_ Date Posted to FLAIR: \_\_\_\_\_

Final Review Completed by (Initial): \_\_\_\_\_ Date Notification of Posting Sent: \_\_\_\_\_

**Attachment I**

**Trial Court Budget Allocations  
FY 2010-2011**

**Foreclosure and Economic Recovery Funding  
State Courts Revenue Trust Fund  
Cost Center - 375**

<b>Circuit</b>	<b>OPS 030000</b>	<b>Expenses 040000</b>	<b>Contracted Services 100777</b>	<b>Senior Judge Days 100630</b>	<b>Total All Categories</b>
1	63,179	6,086	0	37,100	106,365
2	74,359	10,826	0	21,180	106,365
3	64,261	0	0	0	64,261
4	40,000	0	0	172,729	212,729
5	140,430	199	0	72,100	212,729
6	221,738	13,064	0	82,950	317,752
7	117,378	4,351	0	91,000	212,729
8	39,126	7,704	42,035	17,500	106,365
9	178,707	0	0	246,750	425,457
10	65,494	22,671	0	18,200	106,365
11	660,831	24,862	4,860	171,500	862,053
12	116,229	2,000	0	94,500	212,729
13	224,649	7,855	0	195,000	427,504
14	63,935	10,000	0	32,430	106,365
15	355,936	40,000	0	250,604	646,540
16	27,989	14,276	14,400	49,700	106,365
17	505,378	53,662	0	87,500	646,540
18	58,451	0	0	260,643	319,094
19	112,324	16,405	0	84,000	212,729
20	272,158	0	0	153,300	425,458
<b>Total</b>	<b>3,402,552</b>	<b>233,961</b>	<b>61,295</b>	<b>2,138,686</b>	<b>5,836,494</b>

**Arlene Huszar**

---

**From:** Ted McFetridge  
**Sent:** Wednesday, November 17, 2010 1:56 PM  
**To:** Judge Martha Lott  
**Subject:** RE: Mortgage Foreclosure Proceedings

OK

**From:** Judge Martha Lott  
**Sent:** Wednesday, November 17, 2010 1:02 PM  
**To:** Ted McFetridge  
**Subject:** RE: Mortgage Foreclosure Proceedings

Go ahead and prepare the message to clerks and sheriffs and directors and let's discuss it before you send it. I will prepare the message for the judges and send that to you for discussion at the same time.

Martha Ann Lott  
Chief Judge

Ps Judge Reiman is fine with the prison security screening process which we are waiting to have confirmed in writing.

**From:** Ted McFetridge  
**Sent:** Wednesday, November 17, 2010 9:08 AM  
**To:** Judge Martha Lott  
**Subject:** FW: Mortgage Foreclosure Proceedings

Communications

I can forward the attached to the directors, and prepare a short message (approved by you) to be sent to the clerks and sheriffs (court security) about the presumption that court events are open to the public. Will you want to send this material to the judges and judicial assistants or have me do it?

We can also talk about this Thursday morning.

Ted

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**Cc:** Trial Court Administrators; Lisa Goodner; Blan Teagle; Laura Rush; Kristine Slayden; Brenda Johnson; Judge John Laurent  
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Please see the attached memorandum from Chief Justice Canady regarding mortgage foreclosure proceedings.

Also attached is a copy of Chief Justice Canady's letter to The Florida Press Association.

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Email [howellsd@flcourts.org](mailto:howellsd@flcourts.org)





# Supreme Court of Florida

500 South Duval Street  
Tallahassee, Florida 32399-1925

CHARLES T. CANADY  
CHIEF JUSTICE  
BARBARA J. PARIENTE  
R. FRED LEWIS  
PEGGY A. QUINCE  
RICKY L. POLSTON  
JORGE LABARGA  
JAMES E.C. PERRY  
JUSTICES

THOMAS D. HALL  
CLERK OF COURT

KEVIN WHITE  
ACTING MARSHAL

## MEMORANDUM

**TO:** Chief Judges of the Circuit Courts

**FROM:** Chief Justice Charles T. Canady *CTC*

**DATE:** November 17, 2010

**SUBJECT:** Mortgage Foreclosure Proceedings

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Enclosed for your review and action is a letter dated November 12, 2010, that I received from the Florida Press Association and other organizations. The letter alleges that in some instances, members of the public and/or press either have been advised that they cannot attend mortgage foreclosure proceedings or have been prevented from attending such proceedings.

As the chief administrative officer of the Florida judicial branch, I am directing all chief judges to examine the current practices within their respective circuits to ensure that those practices are entirely consistent with the constitutional, statutory, procedural rule, and case law requirements of this state regarding the presumption that state court proceedings are open to the public.

I also ask that you communicate with all judges and court staff in your circuit to remind them of the relevant provisions relating to open court proceedings. It is important for you to communicate with the clerks of court and bailiffs within your circuit as well to ensure that those offices provide any visitors

Chief Judges of the Circuit Courts

November 17, 2010

Page Two

or callers with the correct information about attendance at mortgage foreclosure or other court proceedings.

I would also like to take this opportunity to clarify the Supreme Court's understanding of the goals of the Foreclosure and Economic Recovery Funding Initiative, which was partially funded by the Legislature during the 2010 Legislative Session. I have reviewed Judge John Laurent's memorandum of October 28, 2010, a copy of which is attached and incorporated herein by reference. I agree with his description of the 62-percent goal established by the Trial Court Budget Commission as a means to help measure the court system's progress in the initiative and to document how the appropriation for the foreclosure initiative is being spent. There is no reason why the 62-percent goal should interfere with a judge's ability to adjudicate each case fairly on its merits. Each case must be adjudicated in accordance with the law.

Thank you for your ongoing efforts to appropriately administer and resolve the avalanche of mortgage foreclosure cases that have been overwhelming the court system during the past few years. I recognize that the challenge you face in assuring that these cases are resolved properly is unprecedented. I am confident that with the cooperation of all judges and court staff—along with the tools of the revised rules of court procedure, implementation of the managed mediation program, and the influx of court resources through the Foreclosure and Economic Recovery Funding Initiative—the Florida courts will be able to meet this challenge in a manner that protects and preserves the rights of all parties as well as interested observers.

CTC/LG/dgh

Enclosures

cc: Trial Court Administrators



Florida Press Association  
336 E. College Avenue, Suite 203  
Tallahassee, FL 32301  
(850) 521-1199  
Fax (850) 577-3629

Chief Justice Charles T. Canady  
Florida Supreme Court  
500 South Duval Street  
Tallahassee, FL 32399-1925

November 12, 2010

Dear Chief Justice Canady,

We write to express our concern that the right to open access to judicial proceedings is being unduly impeded in foreclosure proceedings around the state. Our organizations have received numerous reports that extraordinary barriers to access are preventing members of the general public, as well as representatives of the news media, from observing foreclosure proceedings in judicial circuits around the state. We believe these barriers undercut the transparency of the judicial process; they also violate the strong presumption of open access to judicial proceedings under Florida law. We urge you to take action to secure the public's right to observe the workings of the judicial system.

As you know, Florida law recognizes a strong presumption in favor of open access to judicial proceedings. We have no objection, of course, to ordinary security screening measures. We are concerned, however, that the barriers to access here go far beyond such measures, leaving members of the public and press subject to the discretion of individual foreclosure judges to admit or exclude them.

The reports we have received come from all around the state, and although the precise nature of the barriers to access varies, a troubling pattern emerges: foreclosure divisions recently established by the judicial circuits have been operating under a presumption of closure to members of the general public, rather than the presumption of openness mandated by Florida law. An illustrative, but not exhaustive, list of encounters that have been reported to our organizations since August 2010 follows:

- A court observer in Hillsborough County called the court to ask about the rules governing attendance at foreclosure proceedings and was told that the proceedings were not open to the public.
- A pro se defendant in Duval County was told by a member of court security that she could not access foreclosure proceedings because only attorneys were permitted.
- A court observer called the Orange County courthouse to ask about attending foreclosure proceedings. She was informed that foreclosure hearings were held "in private chambers" and therefore not open to the public.

- In Citrus County, an individual preparing to mount a pro se defense in his own foreclosure case attempted to attend foreclosure hearings in advance of his own so that he could know what to expect when his case was heard. He was told that foreclosure hearings are “private” and take place in judges’ chambers, and that he would not be permitted to observe them.
- Most recently, a legal aid attorney in Jacksonville attended a foreclosure proceeding accompanied by a reporter from Rolling Stone Magazine. Neither the attorney nor the reporter did anything disruptive to the proceedings. At one point the reporter left the proceedings in order to interview a pro se litigant whose case had just been heard. Later that day, the judge sent an email to the attorney castigating her for bringing the reporter into the proceedings. He stated that, while “attorneys are welcome in Chambers at their leisure,” members of the media are “permitted” entry only upon “proper request to the security officer.” He further informed the attorney that she “did not have authority to take anyone back to chambers without proper screening” and stated that her “apparent authorization that the reporter could pursue a property owner immediately out of Chambers into the hallway for an interview” may be “sited [sic] for possible contempt charges in the future.”<sup>1</sup>

In raising our concerns about this pattern of exclusion, we rely on the extensive body of case law that has made Florida a model for open government. Systematically excluding members of the press and public from judicial foreclosure proceedings violates the robust guarantee of open access to courts provided by Florida law. This Court has held that “both civil and criminal court proceedings in Florida are public events and adhere to the well established common law right of access to court proceedings and records.” *Barron v. Fla. Freedom Newspapers, Inc.*, 531 So. 2d 113, 116 (Fla. 1988); see also Fla. R. Jud. Admin. 2.420 (codifying public right of access to records of the judiciary). *Barron* articulated this right of access in forceful terms. It emphasized that “a strong presumption of openness exists for all court proceedings” and outlined the carefully circumscribed exceptions to this broad rule:

[C]losure of court proceedings or records should occur only when necessary (a) to comply with established public policy set forth in the constitution, statutes, rules, or case law; (b) to protect trade secrets; (c) to protect a compelling governmental interest [e.g., national security; confidential informants]; (d) to obtain evidence to properly determine legal issues in a case; (e) to avoid substantial injury to innocent third parties [e.g., to protect young witnesses from offensive testimony; to protect children in a divorce]; or (f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.

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<sup>1</sup> Since the incident in Duval County was particularly egregious, we have also asked that Chief Judge Moran consider appropriate action.

*Id.*, at 118. Even in these exceptional circumstances, “before entering a closure order, the trial court shall determine that no reasonable alternative is available to accomplish the desired result, and, if none exists, the trial court must use the least restrictive closure necessary to accomplish its purpose.” *Id.*

The protection of public access to judicial proceedings serves fundamental constitutional values. In particular, the “value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known.” *Sarasota Herald-Tribune v. State*, 924 So. 2d 8, 12 (Fla. 2d DCA 2005) (quoting *Press-Enter. Co. v. Super. Ct.*, 464 U.S. 501, 508 (1984)). “A trial courtroom is a public place where people have a general right to be present, and what transpires in the courtroom is public property.” *Plaintiff B v. Francis*, No. 5:08-cv-79, 2010 WL 503067, \*2 (N.D. Fla. Feb. 5, 2010). Foreclosure proceedings are currently a matter of intense public interest. Indeed, the media has, in recent months, scrutinized them for possible procedural deficiencies. *See, e.g.*, Gretchen Morgenson and Geraldine Fabrikant, *Florida’s High-Speed Answer to a Foreclosure Mess*, N.Y. TIMES, Sept. 14, 2010; Polyana da Costa, *Before Foreclosing, Judges Must Hear Out Homeowners*, MIAMI DAILY BUS. REV., Oct. 14, 2010.

As the examples outlined above show, Florida’s presumption of openness is being inverted in the context of foreclosure proceedings: courts across the state are effectively imposing a presumption of closure, which may be overcome only by special permission to observe proceedings. In effect, only those who actively assert their right of access in the face of initial barriers, and then ultimately receive permission, may exercise their right to observe foreclosure hearings.

Under Florida law, there are few justifications that can counterbalance the right to access. Even when those exceptional circumstances exist, the court must still determine that no more narrowly tailored alternative is available. *Barron*, 531 So. 2d at 118; *see also Globe Newspaper Co. v. Super. Ct. for the County of Norfolk*, 457 U.S. 596 (1982) (invalidating statute closing trials for certain sex offenses involving minors where state had a “compelling” interest in protecting minors’ privacy but where the court “offered no empirical support” that closure would effectively further that interest). There is no indication that closure of foreclosure courts occurs only when such rigorous analysis has taken place. Indeed, the opposite appears to be true: by choosing to conduct foreclosure hearings in “private” conference rooms or judicial chambers and treat those as closed proceedings, the burden shifts to members of the press or public to convince the court to allow access.

We recognize that the heavy volume of foreclosure cases has led to difficulties finding judges and courtrooms to hear the cases. As a result, some cases are being held in chambers for lack of an available traditional courtroom. Nevertheless, the proceedings must be open, even if they are held temporarily in a smaller and less formal physical

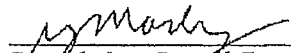
setting than usual. While we understand the necessity for ordinary and uniform security screening procedures, the unavailability of a traditional courtroom cannot justify a deprivation of the rights established under Florida law and the U.S. Constitution.

This Court has noted that the press plays an indispensable role in maintaining "the judicial system's credibility in a free society." *Barron*, 531 So. 2d at 116. That credibility cannot be maintained when members of the public and media are dependent on the indulgence of the presiding judge to allow them to observe important judicial proceedings.

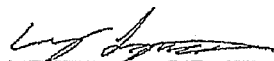
It is our sincere hope that we, and other representatives of the media, will be able to avoid instituting litigation over the issue of access to foreclosure proceedings. We do face certain time constraints, however, because Florida Rule of Appellate Procedure 9.100(d) provides for expedited review of orders excluding the public and media from judicial proceedings, and it requires such petitions to be filed within 30 days of an exclusion order.<sup>2</sup>


Accordingly, we respectfully urge you to take corrective action to ensure citizen and press access as guaranteed by Florida's right-of-access jurisprudence. In particular, we ask that you promulgate an Administrative Order or take other expeditious and appropriate action to ensure that both the public and media may observe proceedings consistent with Florida law and subject only to ordinary security measures

We thank you for your attention to this important matter.

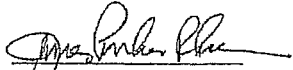
  
Sam Morley, General Counsel  
The Florida Press Association

  
Talbot D'Alemberte, Bar No. 0017529  
The Florida Press Association

  
Larry Schwartz, Staff Attorney  
The American Civil Liberties Union

  
Randall Marshall, Legal Director  
The American Civil Liberties Union of Florida

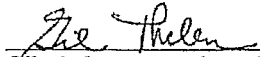
<sup>2</sup> The incident in Duval County occurred on October 26<sup>th</sup>. Accordingly, the last day to file a petition for review pursuant to Rule 9.100(d) is November 29<sup>th</sup>.



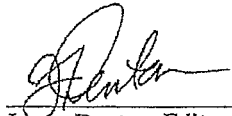
James Parker Rhea, Director & General Counsel  
The First Amendment Foundation



C. Patrick Roberts, President & CEO  
Florida Association of Broadcasters



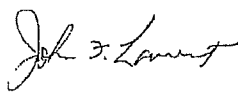
Gil Thelen, Executive Director  
The Florida Society of Newspaper Editors



James Denton, Editor  
The Florida Times-Union



## MEMORANDUM

**TO:** Chief Judges of the Circuit Courts  
**FROM:** John Laurent   
**DATE:** October 28, 2010  
**SUBJECT:** Foreclosure Initiative

*The Honorable  
John F. Laurent, Chair*

*The Honorable  
Margaret Steinbeck,  
Vice-Chair*

### **Members**

*Catherine Brunson, Circuit Judge  
Paul S. Bryan, Circuit Judge  
Joseph P. Farina, Circuit Judge  
Charles A. Francis, Circuit Judge  
Mark Mahon, Circuit Judge  
J. Thomas McGrady, Circuit Judge  
Wayne M. Miller, County Judge  
Belvin, Perry, Jr., Circuit Judge  
Robert E. Roundtree, Jr., Circuit Judge  
Clayton D. Simmons, Circuit Judge  
Elijah Smiley, Circuit Judge  
Patricia V. Thomas, Circuit Judge  
Mike Bridenback, Court Administrator  
Tom Genung, Court Administrator  
Sandra Lonergan, Court Administrator  
Carol Lee Orlman, Court Administrator  
Walt Smith, Court Administrator  
Mark Weinberg, Court Administrator  
Robin Wright, Court Administrator*

### **Ex-Officio Members**

*The Honorable Kevin M. Emas  
Florida Conference of Circuit Court Judges  
The Honorable Susan F. Schaeffer  
Chair Emeritus*

### **Supreme Court Liaison**

*Justice James E. C. Perry*

*Florida State Courts System*

*500 South Duval Street  
Tallahassee, FL 32399-1900  
www.flcourts.org*

In follow up to the Judicial Administration Committee conference call held on October 18, 2010, I am writing to reiterate the Trial Court Budget Commission's purpose for tracking the progress of cases the trial courts are hearing using funding provided for the foreclosure and economic recovery initiative. When the Florida Legislature appropriated special funding of \$6 million to help the trial courts with the significant backlog of foreclosure cases, the Trial Court Budget Commission established a measurement of progress that corresponded to the funding received: 62% of the backlog cases potentially could be processed because the Legislature funded 62% of the original request from the courts. A simple case tracking system was set up to monitor the progress and identify any reasons for delays. This is so that we will be able to report to the Legislature on how these funds were used. However, the Legislature has not specifically directed us to make such a report.

The 62% rate is not a quota. The 62% rate is simply a goal set by the TCBC to help measure the courts' progress in this initiative and document how the appropriation for the foreclosure initiative is being spent. The 62% rate was set before the initiative began and, most notably, before many of the lender moratoriums and other delays occurred. Please assure judges working on this project that the 62% rate was never intended to interfere with their ability to adjudicate each case fairly on its merits.

We will continue to monitor the progress of this initiative because we have an obligation to account for how these funds have been used. But we also will document all issues related to any difficulties that prevent or delay the court from hearing and disposing of cases before them.

JL/ks

cc: TCBC Members



**Arlene Huszar**

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**From:** Debbie Howells <howellsd@flcourts.org>  
**Sent:** Monday, October 18, 2010 1:52 PM  
**To:** Trial Court Chief Judges; Judge Kevin M. Emas  
**Cc:** Trial Court Administrators; Judge Jennifer Bailey; Lisa Goodner; Brenda Johnson; Blaine Teagle; Laura Rush; Greg Youchock; Greg Smith; Kristine Slayden; Charlotte Jerrett; Gary Phillips; Judge John Laurent; Judge Wayne Miller  
**Subject:** Nov. 15 JAC Conference Call

Chief Judge Lee Haworth, Chair of the Judicial Administration Committee, asked us to let you know that a conference call has been scheduled for 12:00 noon on Monday, November 15, 2010. Discussion items will include mortgage foreclosure issues and other matters. To participate in the call, please dial 1-888-808-6959 and, when prompted, enter conference code 9425056 followed by the # key. An agenda and additional information will be provided prior to the call.

Sincerely,

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

## Arlene Huszar

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**From:** Judge Stan Griffis  
**Sent:** Thursday, October 14, 2010 3:15 PM  
**To:** Judge Robert Roundtree, Jr.  
**Cc:** Judge Victor Hulslander; Judge Martha Lott; Ted McFetridge; Judge Toby Monaco  
**Subject:** RE: conforming

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

There was a former court reporter that was involved in the original discussions about foreclosure days, she left and went to Marion. There may be a replacement court reporter that does not understand the history of the issue or agreements.

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**From:** Judge Robert Roundtree, Jr.  
**Sent:** Thursday, October 14, 2010 3:00 PM  
**To:** Judge Stan Griffis  
**Cc:** Judge Victor Hulslander; Judge Martha Lott; Ted McFetridge; Judge Toby Monaco  
**Subject:** conforming

Stan, I am the one who brought this issue up. I thought it best to go to the Chief, Ted and Vic as the new incoming Admin Judge rather than go to you first. I did not think it was my place to bring it up to you since you run your own division out there. I talked with Vic and he said he would talk with you about it. Whatever amount of conforming is done for Alexis, it is creating a problem and people are not too happy about it. She is not the only JA who is over worked. Conforming is a very time consuming task that all JA's have to do but hate doing. The perception here is that she has "refused" to do certain conforming and has it shipped here or has court reporters over there do it or Candace has to do it. As you know perception is reality. The perception is that she is being treated favorably or that she can't do her work. Either of those perceptions is not good for her or for the morale of the other JA's and employees. I obviously don't know all the facts. I just relayed what the "word on the street" is and the perception it has created. I view it as my office's responsibility to handle conforming of all items I sign or that all of our JA's should get conforming help.

**Arlene Huszar**

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**From:** Mary Lou Gardner  
**Sent:** Thursday, October 07, 2010 10:51 AM  
**To:** 'wilsond@flcourts.org'  
**Cc:** Ted McFetridge; Judge Martha Lott  
**Subject:** Trial Court Budget Amendment Foreclosure & Economic Recovery Program  
**Attachments:** doc00099920101007103153.pdf

Good Morning Dorothy,

Attached is the above Eighth Judicial Circuit Budget Amendment for the Foreclosure & Economic Recovery Program. Thank you for your assistance with this request.

Mary Lou Gardner, Administrative Services Manager  
Alachua County Family & Civil Justice Center  
201 East University Avenue, Room 410  
Gainesville, FL 32601  
(352) 491-4490  
(352) 374-5238  
[gardnem@circuit8.org](mailto:gardnem@circuit8.org)