

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

Signed purchase contract for the homestead residence

Listing agreement for sale of the homestead residence

Preliminary HUD-1

Written permission from the borrower authorizing the plaintiff or any agent of the plaintiff to speak with the real estate agent about the borrower's loan

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

EXHIBIT 5C

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

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

Current title search for the homestead residence

EXHIBIT 6

BORROWER'S REQUEST FOR PLAINTIFF'S DISCLOSURE FOR MEDIATION

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

Plaintiff(s), Case No(s):

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vs.

Defendant(s).

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

_____, (*printed name*), as the borrower on the mortgage sued upon in this case, hereby requests the following information and disclosure from the plaintiff pursuant to Administrative Order 2010-~~15~~ entered in the First Judicial Circuit (*mark the information and documents requested*):

- ___ Documentary evidence the plaintiff is the owner and holder in due course of the note and mortgage sued upon.
 - ___ A history showing the application of all payments by the borrower during the life of the loan.
 - ___ A statement of the plaintiff's position on the present net present value of the mortgage loan.
 - ___ The most current appraisal of the property available to the plaintiff.
- Signed on _____, 20__.

(Signature)

[Certificate of Service on the parties]

EXHIBIT 7

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

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

Case No(s):

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Plaintiff(s),

vs.

Defendant(s).

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

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

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

Signed on _____, 20__.

[Name of Plaintiff]

(Signature)

(Printed Name)

[Certificate of Service by Plaintiff's Counsel]

EXHIBIT 8

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

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

Case No(s):

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Plaintiff(s),

vs.

Defendant(s).

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

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

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

Signed on _____, 20__.

(Signature)

(Printed Name)

[Certificate of Service by Plaintiff's Counsel]

EXHIBIT 9
MEDIATION REPORT

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

Plaintiff(s), Case No(s):

vs.

Defendant(s).

MEDIATION REPORT
(RMFM Program)

Pursuant to the Court's Order, a Mediation Conference was conducted by
[name of mediator], Certified Circuit Civil Mediator, on *[date]*.

1. The following were present:
 - a) The Plaintiff's Representative, *[name]*, and Plaintiff's attorney,
[name].
 - b) The Defendant[s], *[name(s)]*, and his/her/their attorney[s],
[name(s)].
2. The result of the Mediation Conference is as follows (*Mediator selects only one*):

_____ A signed **SETTLEMENT AGREEMENT** was reached during this Conference.

_____ The parties have reached a total **IMPASSE**.

_____ The parties have agreed to **ADJOURN** the mediation to *[date]*.

_____ Mediation has been **TERMINATED**.

As required by Administrative Order *[number]* a copy of the most recently filed Form A is attached.

[Certificate of Service]

EXHIBIT 10

CERTIFICATION REGARDING SETTLEMENT AUTHORITY (RESIDENCE NOT HOMESTEAD)

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

Case No(s):

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Plaintiff(s),

vs.

Defendant(s).

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

In compliance with Administrative Order 2010 **15**, the undersigned attorney certifies that following person or entity has full authority to negotiate a settlement of this case with the borrower without further consultation:

(All of the following information must be provided)

Name:

Mailing Address:

Telephone Number (including area code and extension):

Fax Number:

Email Address:

Loan/File Number:

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

I certify a copy of this certification was served on defendants with the summons.

Date:

[Signature, Address, Phone Number of Plaintiff's Counsel]

EXHIBIT 11

ORDERS FOR REFERRALS, COMPLIANCE, AND ENFORCEMENT

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

Case No(s):

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Plaintiff(s),

vs.

Defendant(s).

ORDER TO SHOW CAUSE

(Plaintiff's Failure to Comply with Administrative Order 2010-**15**)

It appearing to the court that Plaintiff has failed to comply with the requirements of Administrative Order 2010-**15** in regards to the following (*as marked*):

Form A

Plaintiff failed to file Form A.

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

Payment of RMFM Program Fees

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

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

Electronic Transmittal of Case Number and Borrower Contact Information

Plaintiff failed to electronically submit the case number and contact

information to the borrower to the Program Manager using the approved web-based information platform.

Failure to File and Serve Certification Regarding Settlement Authority

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

Attendance at Mediation

___ Plaintiff's counsel failed to attend mediation.

___ Plaintiff's representative designated in the most recent Form A filed in the court file failed to attend mediation.

___ Plaintiff's agent with full authority to sign a settlement agreement failed to attend mediation.

___ Plaintiff's representative failed to attend by telephone at all times during the mediation session.

___ After the mediation resulted in an impasse, plaintiff's representative failed to file the certification regarding attendance at mediation by telephone at all times (Form Exhibit 7 attached to the Administrative Order).

IT IS ORDERED that Plaintiff shall appear before the court at the *[designation of courthouse/courtroom]* on *[date]* at *[time]* to show cause why sanctions for noncompliance the Administrative Order 2010-~~15~~ should not be imposed. Plaintiff is cautioned that failure to appear at the show cause hearing may result in the case being dismissed and the imposition of other appropriate sanctions.

Signed on *[date]*

[signature block for judge]

[Certificate of Service]

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

Case No(s):

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Plaintiff(s),

vs.

Defendant(s).

ORDER AFTER SHOW CAUSE HEARING
(Plaintiff's Failure to Comply with Administrative Order 2010-~~15~~)

The court having determined that Plaintiff has failed to comply with the requirements of Administrative Order 2010-~~15~~, it is ORDERED and ADJUDGED (*as marked*):

Form A

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

Payment of RMFM Program Fees

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

Electronic Transmittal of Case Number and Borrower Contact Information

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

Failure to File and Serve Certification Regarding Settlement Authority

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

Attendance at Mediation

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

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

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

Dismissal

___ This case is dismissed without prejudice.

Additional Sanctions

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

Signed on [date]

[signature block for judge]

[Certificate of Service]

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

Case No(s).:

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Plaintiff(s),

vs.

Defendant(s).

ORDER REFERRING CASE TO RMFM PROGRAM
(Case Filed Prior to ~~effective date of Administrative Order~~)

It appearing to the court that the residence which is the subject of this action to foreclose a mortgage is a "homestead residence" to which Administrative Order 2010-~~5~~ applies and that Defendant _____ (Borrower) has requested that the case be referred to mediation, it is ORDERED:

The case is referred to the RMFM Program for mediation, and the plaintiff and borrower shall comply with Administrative Order 2010-~~5~~. Within 10 days from the date of this order, the plaintiff shall pay that portion of the RMFM Program fees payable at the time suit is filed, file a properly filled out Form A in the manner required by the administrative order, and electronically transmit Form A to the Program Manager using the approved web-based information platform.

The plaintiff and borrower are to cooperate with the Program Manager and must attend any mediation scheduled by the Program Manager.

The plaintiff is advised and cautioned that failure to comply in a timely manner with the requirements of this order will result in dismissal of the cause of action without further order of the court.

Signed on *[date]*

[signature block for judge]

[Certificate of Service]

EXHIBIT 12

**CERTIFICATION OF COMPLIANCE WITH,
ADMINISTRATIVE ORDER 2010-15**

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

Case No(s):

Plaintiff,

vs.

Defendant(s).

**CERTIFICATE OF COMPLIANCE WITH
ADMINISTRATIVE ORDER 2009-15**

(Must Be Submitted With Request For Final Or Summary Judgment)

The undersigned attorney certifies *(mark as appropriate)*:

This action was filed before March 13, 2009, and compliance with Administrative Order 2010-15 (and previous Administrative Orders 2009-01 and 2009-15) was not ordered by the court.

This action was filed after March 13, 2009, and Plaintiff and Plaintiff's counsel have fully complied with the requirements of Administrative Order 2010-15 (and previous Administrative Orders 2009-01 and 2009-15), and a true and accurate copy of the most recently filed Form A and the mediators report or notice of borrower's nonparticipation is attached to this certificate.

Signed on [date].

[signature block for certifying attorney]

[certificate of service]

EXHIBIT 13

MEDIATION TRAINING STANDARDS

Residential Mortgage Foreclosure Training Standards

Introduction

Achieving an informed and committed workforce of Residential Mortgage Foreclosure Mediators requires not only a grasp of the obvious mediation skills, but an extension of those skills into practical and substantive knowledge areas including, but not limited to, mortgage loan products, securities, loan servicers, court processes, and resolution options. A training model which includes both a preliminary online modular dissemination of information followed by live classroom training will provide this knowledge. Participants' completion of online training modules prior to a one-day live class will facilitate better discussion and greater comprehension. Post training access to online practice resources can improve, develop statewide practice and provide real time content updates.

Development of this training model is not only feasible, but also can be developed in a timely way. We recommend that each training provider maintain a needs-based approach to training, reflect on and respond to the participants' needs, and clearly state a training rationale that will serve as a methodological and ethical touchstone. It is our hope that this outline for Residential Mortgage Foreclosure Mediation Training Objectives and Standards will lead to quality mortgage foreclosure mediation training and practice throughout the State of Florida.

1. Mortgage Foreclosure Mediation Training Goals

At the conclusion of the training, the participants shall be able to:

- Recognize Basic Legal Concepts in Mortgage Foreclosure Mediation
- Identify Negotiation Dynamics in Mortgage Foreclosure Mediation
- Identify Mediation Process and Techniques in Mortgage Foreclosure Mediation
- Recognize Financial Issues in Mortgage Foreclosure Mediation
- Identify Communication Skills in Mortgage Foreclosure Mediation
- Recognize Ethical Issues in Mortgage Foreclosure Mediation

2. Learning Objectives

- a. Basic Legal Concepts in Mortgage Foreclosure Mediation
 - 1) Recognize basic legal concepts in mortgage foreclosures.
 - 2) Explain the process of, and timelines in, mortgage foreclosure and in the mortgage foreclosure mediation process.
 - 3) Identify the state rules, state and federal statutes, servicing guidelines, and local procedures and forms governing mortgage foreclosure mediation.
 - 4) Identify the protections, constraints, and exceptions of the Florida Confidentiality and Privilege Act in the context of Mortgage Foreclosure Mediation.
- b. Negotiation Dynamics in Mortgage Foreclosure Mediation
 - 1) Recognize the issues of settlement authority as they relate to the stakeholders in Mortgage Foreclosure Mediation.
 - 2) Recognize the impact of physical, telephonic, videoconference, on line or other electronic means of appearance at the mediation conference on the negotiation.
 - 3) Recognize the role(s) of the following in the Mortgage Foreclosure Mediation process:
 - i. lender
 - ii. loan servicer
 - iii. investor
 - iv. mortgage broker
 - v. mortgage pool
 - vi. second mortgagee
 - vii. condominium association
 - viii. homeowners' association
 - ix. lien holders (i.e., municipal, mechanics lien)
 - x. MERS

- xi. appraiser
- 4) Recognize techniques for assessing risks and incentives in a mortgage foreclosure case.
- 5) Recognize concept of “good faith” and distinguish it from state court appearance requirements.
- 6) Recognize basic mortgage nomenclature and sources, types and structure of mortgages.
- 7) Identify options for resolution such as:
 - i. modification of mortgage terms
 - ii. partial loan forgiveness
 - iii. placement of delinquent payments at the end of the loan term
 - iv. short sale
 - v. deed in lieu of foreclosure
 - vi. waiver of deficiency judgment
 - vii. stipulation to modify (i.e., if mortgagor makes X number of payments, then the loan will be modified)
 - viii. principal set aside
 - ix. repayment plan
 - x. loan reinstatement
 - xi. “right to rent” (i.e., the bank owns the property and rents it to the former borrower at the market rental rate)

c. Mediation Process and Techniques in Mortgage Foreclosure Mediation

- 1) Identify procedural elements which should be addressed prior to the parties’ entry into the mediation room including telephonic and other electronic equipment.
- 2) Identify information which needs to be exchanged prior to mediation (i.e., Pooling and Servicing Agreement; life of loan history; mortgagee current financial disclosure; different loss mitigation, loan modification and other resolution options).

- 3) Identify issues which are appropriate for mortgage foreclosure mediation and those that are not appropriate.
- 4) Identify individuals who are essential participants in mortgage foreclosure mediation as well as those who are entitled to be present and those who are not required to participate but whose participation may be helpful in mediation.
- 5) Describe techniques for mediating when all parties are self-represented, some parties are self-represented, or all parties are presented by counsel.
- 6) Identify appropriate techniques for handling a situation where a representative appearing for a party does not have full authority to settle.
- 7) Discuss the dynamics of mediating when one or more parties, participants, or representatives frequently participate in mediation.
- 8) Discuss how emotions affect mortgage foreclosure issues and a party's ability to effectively mediate.
- 9) Identify the role and procedures of the Program Manager

d. Financial Issues in Mortgage Foreclosure Mediation

- 1) Understand the Net Present Value Model of the Making Home Affordable Program.
- 2) Understand debt-to-income ratios and guidelines and potentials for re-defaults.
- 3) Identify Fannie Mae, Freddie Mac, FHA, VA, and other loan servicer and investor issues and options.

e. Communication Skills in Mortgage Foreclosure Mediation

- 1) Identify appropriate questions to assist the parties see their own and the other party's issues.

- 2) Identify resources for foreign language interpreters and when and how to use them.

f. Ethical Issues in Mortgage Foreclosure Mediation

- 1) Recognize power imbalances and when a mediator shall advise the parties of the right to seek independent legal counsel.
- 2) Understand that a mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, direct a resolution of any issue or indicate how the court in which the case has been filed will resolve the dispute.
- 3) Memorializing the parties' agreement.

3. **Training Parameters**

a. Training Provider

- 1) Training may be provided by the Program Manager(s) OR by independent training providers.

b. Funding

- 1) Fees would be paid by mediators to training provider(s) and may include entire training process.

c. Structure

- 1) A series of self – study web based modules corresponding to the six categories of learning objectives outlined in these recommendations – each followed by an online quiz; completed at participant's own pace.
- 2) Final online test for pass code entry to live class.
- 3) Live classroom training

- i. Length of Training. An instructional hour is defined as 50 minutes.
 - ii. Span of Training. Live mortgage foreclosure mediation training shall be presented over a period of one (1) day.
- 4) Certificate of Completion of Advanced Course on Florida Residential Mortgage Foreclosure Mediation given to participant. Access to web-based modules terminates.
- 5) Optional Online Learning Forum - for continued learning provided by Program Manager(s) OR by independent training providers – additional monthly fee for access

4. Recommended Course Content Requirements

Required Training Materials. At a minimum, training providers shall provide each of their attendees with a training manual that includes:

- a. An agenda annotated with the learning objectives to be covered in each section and the intended method of instruction;
- b. Sample mortgage foreclosure mediated settlement agreements;
- c. Sample federal government forms, i.e. HAMP Program Hardship Affidavit, HAMP Trial Period Plan, HAMP FAQs, IRS Form 4506-T, Foreclosure Mediation Financial Worksheet;
- d. Suggested readings including:
 - i. Chapter 44, Florida Statutes – Mediation Alternatives to Judicial Action
 - ii. Florida Rules for Certified and Court-Appointed Mediators
 - iii. Rules 1.510 and 1.700 - 1.750, Florida Rules of Civil Procedure
 - iv. Chapter 697, Florida Statutes – Instruments Deemed Mortgages and the Nature of a Mortgage
 - v. Chapter 701, Florida Statutes – Assignment and Cancellation of Mortgages
 - vi. Chapter 702, Florida Statutes – Foreclosure of

- Mortgages, Agreements for Deeds, and Statutory Liens
- vii. Chapter and/or sections pertaining to Condominiums and Homeowner Associations
- viii. Section 55.10(1), Florida Statutes (2004) pertaining to judgment liens
- ix. Federal statutes (i.e. Bankruptcy; Truth in Lending Act, Hope for Homeowners Act of 2008, Fair Debt Collection Practices Act, Service Members Civil Relief Act of 2003, and others to be identified and defined more specifically)
- x. Homeowner Affordability and Stability Plan, Home Affordable Modification Program (HAMP), and guidelines for servicers
- xi. Glossary of Terms
- xii. List of local, state and federal resources for borrowers
- xiii. Internet Links to useful on line resources
- xiv. Current Supreme Court of Florida Administrative Order, In Re Task Force on Residential Mortgage Foreclosure Cases
- xv. Local Judicial Circuit Administrative Order on Residential Mortgage Foreclosure Cases
- xvi. Additional reading resources provided by the Mediation Manager

5. Training Methodology

- a. Pedagogy. Residential mortgage foreclosure mediation training programs shall include, but are not limited to, the following: lecture, group discussion, and a mortgage foreclosure mediation demonstration.
 - 1) Use of subject matter specialists, i.e. lender, borrower, loan servicer, investor, plaintiff and defense counsel, mortgage foreclosure counselor, community resources.
 - 2) A subject matter specialist shall have a substantial part of his or her professional practice in the area about which the specialist is lecturing and shall have the ability to connect his or her area of expertise with the residential mortgage foreclosure mediation process.

- b. Residential Mortgage Foreclosure Mediation Demonstration. All mortgage foreclosure mediation training programs shall present a residential mortgage foreclosure role play mediation demonstration either live (including video conferencing) or by video/DVD presentation.
- c. Web-Based Methodologies. Web-based technologies may be used as an optional delivery method or as a post-training forum for continued learning and discussion for mediators. An online version of the training may provide a repository for the rapidly changing residential mortgage foreclosure training information.
- d. Assessment. Post-training assessment by participants, using post-training surveys combining a Likert scale with narrative response components, should inform content development and methodologies and provide quality assurance for training providers. The post-training survey would give the participants the opportunity to evaluate the effectiveness of the trainer(s), the substantive content of the program, and the practical value of the training, and to offer additional suggestions or comments.

EXHIBIT 14

PARAMETERS FOR MANAGED MEDIATION

PARAMETERS FOR PROVIDERS OF MANAGED MEDIATION SERVICES

Purpose: To define the parameters of managers directing mediation services for parties involved in residential mortgage foreclosure litigation.

A. Characteristics of Program Manager

1. Compliant with ADR principles as promulgated by the supreme court, and ADR statutes and rules;
2. Non-profit entity or associated with a reputable organization of proven competence, autonomous and independent of the judicial branch;
3. Capable of efficient administration of large case loads;
4. Sensitive to cultural, diversity, and Americans with Disabilities Act issues;
5. Politically and professionally neutral;
6. Knowledgeable of court procedures, current trends, laws, rules, and regulations affecting residential foreclosures;
7. Fiscally transparent and accountable;
8. Quickly adaptable to a dynamic and rapidly evolving legal environment;
9. Financially stable;
10. Capable of sustained operation without fiscal impact on the courts;
11. Capable of effectively implementing information technology systems and web-based programs;
12. Alert to ethical and confidentiality issues; and
13. Agreeable to acting as manager for voluntary pre-suit mediation.

B. Services to be Provided by Program Manager

1. Receive mediation referrals and, within designated time limits, schedule and coordinate mediation conferences: date, place and time; reserve and provide venues for mediation and caucus; manage continuances and re-scheduling;
2. Maintain financial books and records to insure transparency and accuracy of receipts and expenditures;

3. Prepare financial statements, financial and performance reports (for example, attendance and failure to attend mediation reports);
4. Establish and maintain performance standards for staff and mediators, including maintaining a roster of mediators comprised of persons who are properly trained in accordance with the standards attached, and who are otherwise qualified, and effective in foreclosure mediation;
5. Assist in specialized training of mediators for workout options and resources;
6. Arrange and pay for interpreters;
7. Bill, collect, deposit, and disburse mediation fees and refunds; pay for necessary services and costs incidental to mediation managing as required to implement mediation administrative order;
8. Establish procedures for managing and communicating with *pro se* litigants and attorneys. This includes implementing a process for prompt outreach to borrower-owners immediately after suit has been filed; the goal of the outreach is to inform mortgagors about the mediation program, invite their participation, and to start the process of referral to mortgage foreclosure counseling and the collection of required financial information;
9. Establish procedures for complying with confidentiality rules;
10. Establish a system for managing mediators that:
 - a. Provides for the impartial assignment of mediators, for example, by the use of a rotating list,
 - b. Is open to qualified supreme court certified mediators who are capable of providing effective services in the residential foreclosure setting, and
 - c. Allows for more than one Mediation Managing entity in the circuit if approved by the chief judge.

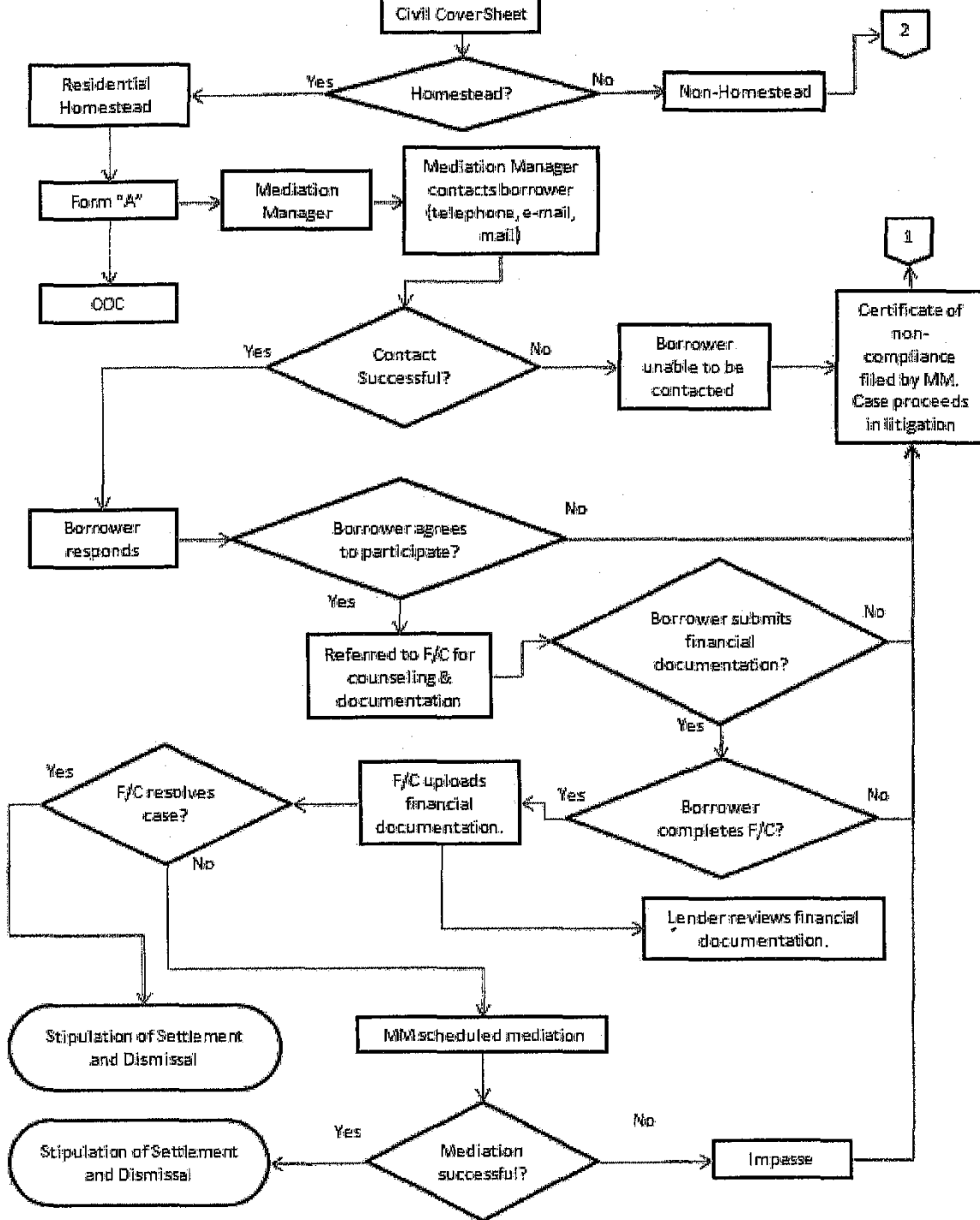
11. Monitor or supervise the preparation of mediation settlement agreements;
12. In accordance with the Administrative Order establish the schedule for division of fees between mediators, managers and others;
13. Prepare operational reports as required by the chief judge, regarding the number of cases mediated, impasse or successful mediations, etc.;
14. Solicit qualified mediators and maintain current list of mediators available for residential foreclosure cases;
15. Establish procedures for disqualifying and replacing mediators with ethical or other conflicts;
16. Coordinate the referral of mortgagors to certified foreclosure counselors pre-mediation;
17. Refer unrepresented parties to legal aid, or panels of pro bono or reduced fee attorneys;
18. Facilitate the exchange of documents between the parties, pre- and post-mediation, including the establishment and maintenance of a secure web-based communication system between the Program Manager and all parties to mediation using a platform capable of transmitting financial data, email, mediation forms and attachments, and able to track participant payments and refunds;
19. Maintain for dissemination to owner-borrowers a list of approved foreclosure counselors willing to perform services at the rates established by the court;
20. Answer inquiries from mediators and parties re the mediation process and forms;
21. Establish a system for resolving complaints against mediators and other persons involved in the Managed Mediation Program;
22. Establish procedures for participant evaluation of mediation program services, including satisfaction surveys;

23. Develop the forms and procedures necessary to verify compliance with the residential foreclosure mediation program by lender/servicer representatives, their attorneys, and borrowers; and
24. Using judicial disqualification criteria as a model, disclose to the chief judge any direct or indirect financial ties to lenders/servicers (including any immediate family members), whether present or within the past three (3) years, with a continuing obligation to disclose.

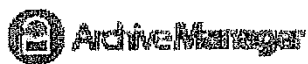
EXHIBIT 15

RMFM PROGRAM FLOWCHART

Managed Mediation Process



August 12, 2009



From: [Judge Terrell](#) **Sent:** Thu, 04 Feb 2010 11:00:00 GMT
To: [Judge Rasmussen](#)
CC: [Keri Igney](#)
Subject: MOA

 [MAO Order Only.doc \(77Kb\)](#)

Attached is the revised MAO from the 19th corrected to apply to the 1st with highlighted proposed grandfather language relating to our pilot project Administrative Order on page 4 and the last page. Please let me know your thoughts.

Attention: The information contained in this E-mail message may be privileged and confidential under Fla.R.Jud.Admin 2.420 and information intended only for the use of the individual(s) named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly prohibited. If you have received this communication in error, please contact the sender by reply E-mail and destroy all copies of the original message. Thank you.

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 **14**. 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



From: [Judge Terrell](#)

Sent: Mon, 08 Feb 2010 09:04:00 GMT

To: [Judge Rasmussen](#)

Subject: MAO Revisions

 [MAO Order Only-Revised.doc \(79Kb\)](#)

The attached includes a few more tweaks. Please let me know if you agree or suggest any better language or changes.

Attention: The information contained in this E-mail message may be privileged and confidential under Fla.R.Jud.Admin 2.420 and information intended only for the use of the individual(s) named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly prohibited. If you have received this communication in error, please contact the sender by reply E-mail and destroy all copies of the original message. Thank you.

IN THE COURTS OF THE FIRST JUDICIAL CIRCUIT

IN AND FOR THE STATE OF FLORIDA

ADMINISTRATIVE ORDER NO. 2010-01

(Supersedes Administrative Order 2009-18 upon compliance with Mediator Training Requirements of this Order)

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 **14**. 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 mortgage 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 the mediation training requirements of this administrative order are 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, including maintaining a list as to which mediation site(s) in the First Circuit the mediators designate their willingness to mediate. 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 supersede **Administrative Order 2009-18**.

ORDERED on _____, 2010.

TERRY D. TERRELL, Chief Judge
First Judicial Circuit, State of Florida



From: [Burton Conner](#)
To: [Judge Terrell](#); [Bailey, Jennifer](#);
Subject: RE: Follow-Up

Sent: Tue, 09 Feb 2010 14:31:46 GMT

Yes, you are correct. The language in yellow is what I had in my draft for the 19th Circuit in the second paragraph of numbered paragraph 6 (the language in yellow is something I added to the original language approved by the Supreme Court under numbered paragraph 6). The language in green is the modification I made today to address the issue raised this week by CC concerning foreclosure counseling.

From: Judge Terrell [mailto:Judge.Terrell@FLCOURTS1.GOV]
Sent: Tuesday, February 09, 2010 3:10 PM
To: Burton Conner; Bailey, Jennifer
Subject: RE: Follow-Up

Your language looks just fine. Keeping in conformity with the structure of the MAO, it would modify the MAO language in paragraph 2 of section 6, as I read it.

Terry

From: Burton Conner [mailto:ConnerB@circuit19.org]
Sent: Tuesday, February 09, 2010 12:50 PM
To: Judge Terrell; Bailey, Jennifer
Subject: RE: Follow-Up

12:15 tomorrow works for me. My back-line number is 772-462-1978.

To deal with this issue of borrower's counsel attending foreclosure counseling, what do you think of the following language:

The borrower must meet in person or by telephone with an approved mortgage foreclosure counselor no later than 30 days after the borrower is initially in contact with the Program Manager. The borrower's legal counsel may also attend foreclosure counseling, but attendance by legal counsel without the borrower does not satisfy the requirement. 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.

I am composing this while conducting a jury trial, so my word smithing may not be the best.

Burton

From: Judge Terrell [mailto:Judge.Terrell@FLCOURTS1.GOV]
Sent: Tuesday, February 09, 2010 12:29 PM
To: Bailey, Jennifer; Burton Conner
Subject: RE: Follow-Up

It will work for me. What number do you want me to call?

From: Bailey, Jennifer [mailto:JBailey@jud11.flcourts.org]
Sent: Tuesday, February 09, 2010 10:55 AM
To: Judge Terrell; Burton Conner
Subject: RE: Follow-Up

Tomorrow works better for me. I need to sit down again with all of this. Tomorrow 12:15?

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: Judge Terrell [mailto:Judge.Terrell@FLCOURTS1.GOV]
Sent: Tuesday, February 09, 2010 11:41 AM
To: Burton Conner
Cc: Bailey, Jennifer
Subject: RE: Follow-Up

Burton and Jennifer,

I saw your language in paragraph 22 and agree it provides for continuity. I included reference to our pilot project AO just as a precaution. It was added to ensure no party could possibly question the interim continuing necessity to keep cases moving that originated under the pilot project. It may be overkill, but, considering some of the resistance experienced over the past 10 months, it seems that to error on the side of caution is justified.

On another note, it might be appropriate to add the requirement that the borrower attend credit counseling in person to paragraph 10 of the MAO to address the e-mail discussions of the day.

I'm available at noon ET today and tomorrow for a conference call if you like. My conference line is (850) 595-4463.

Terry

From: Burton Conner [mailto:ConnerB@circuit19.org]
Sent: Tuesday, February 09, 2010 10:15 AM
To: Judge Terrell
Subject: RE: Follow-Up

Terry, thanks for your draft. I notice that you incorporated the language I drafted in paragraph 22 to deal with the grandfather situation, but I see you reference the issue again in the heading, paragraph 2, and the last sentence of the MAO (you make the point that mediation training standards have to be met). So it strikes me that you have more of a concern about the situation than I do. I maybe be overlooking an aspect of the problem. Could you tell me a little more about your concerns?

I agree, Jennifer, that a timeline for the Program Manager to make contact with the

borrower should be set (which means a Certificate of Borrower Nonparticipation should be filed if contact is not made within the timeline). 30 days makes sense to me, but I wonder if we should run it by Ned Pope to get his input (he may suggest a 45 day window).

I am available both today and tomorrow over the lunch hour if you both are available for a telephone conference. It might be a good idea for us to meet tomorrow and make Thursday available as well in case we need more discussion. Let me know what you both want to do.

Burton

From: Judge Terrell [mailto:Judge.Terrell@FLCOURTS1.GOV]
Sent: Monday, February 08, 2010 5:25 PM
To: Burton Conner; Bailey, Jennifer
Subject: RE: Follow-Up

Burton and Jennifer,

Please accept my apologies for the delay in responding to your e-mails and suggestions. Attached is the MAO which incorporates all your revisions. The revisions you drafted appear to be appropriate and address a reasonable time frame for mediator training. The First Circuit MAO attachment also includes revisions to address the grandfather provision of our 2009 AO to prevent shutting down our pilot project; while RMFM mediators get the supplemental training required by the Supreme Court. It also includes a provision that the program manager keep a rotating list of mediators willing to mediate in the various sites which we expect to get up and running in this multi-county circuit. Those revisions are highlighted in yellow. Please let me know whether you see any problems. I will need to run it by Ned Pope later this week to ensure it causes no problems for the Collins Center, as well.

Jennifer, your comment about the contact deadline seems appropriate, especially if it works in a circuit with the volume with which you deal; although a slightly longer one doesn't seem out of the question.

I have no problem with the uniform reporting requirement format. Burton, have you shared it with the Collins Center to see if they are comfortable with it?

In addition, I just got an e-mail from Ned Pope regarding a problem of borrowers' counsel showing up at the consumer credit counseling session instead of the borrower. We may need to add that to the MAO for clarities sake.

There should not be a problem arranging a conference call Wednesday or Thursday. The draft of the MAO is likely to be sent to my judges this week for their input, and a possibility of getting a final order signed next week is not totally unattainable if we resolve these few issues.

Terry

From: Burton Conner [mailto:ConnerB@circuit19.org]
Sent: Monday, February 08, 2010 2:26 PM
To: Bailey, Jennifer; Judge Terrell
Subject: Follow-Up

Jennifer and Terry,

I don't mean to be a pest and I know both of you are extremely busy, but just wanted

to touch base and see how things are progressing in your circuit with a draft of the MAO. I assume we are not going to be in a position to have all three Chiefs sign a MAO next Monday.

Also, back in December, I sent both of you a statistical report I have asked CC to use for our circuit (I am attaching it again) and I asked both of you to look at it and give me your thoughts. I also asked if our three circuits could agree on a standard format of reporting to monitor success of the program. The reason I am bringing it up again is because I am on the subcommittee of the ADR Rules & Policy Committee, which is charged in the S.Ct. 12/28/09 OA with developing a reporting format to monitor the success and operation of managed mediation programs. I thought if the three of us could agree on a similar format, it would be a good starting point for the ADR R&P Committee to chew on and massage.

Thanks for your input (if convenient).

Have a Great Week!
Burton

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From: [Judge Terrell](#) **Sent:** Mon, 15 Feb 2010 08:51:06 GMT
To: [Judge Rasmussen](#); [Robin Wright](#); [Brooke Jones](#);
CC: [Keri Igney](#); [Ardye Graham](#);
Subject: RE: Agenda Items

Residential Mortgage Foreclosure Mediation Model Administrative Order

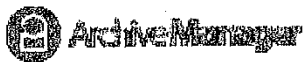
From: Brooke Jones
Sent: Monday, February 15, 2010 8:17 AM
To: Judge Terrell; Judge Rasmussen; Robin Wright
Cc: Ardye Graham; Keri Igney
Subject: Agenda Items

Please let me know if you have any agenda items for the Chief Judge Administrative meeting on Wednesday. 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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Subject: Agenda Items

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Brooke Jones
Administrative Assistant to Robin Wright, Court Administrator
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Court Administration
(850)595-4400
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From: John Kuder **Sent:** Tue, 16 Feb 2010 17:07:11 GMT
To: Judge Terrell; Bailey, Jennifer; Burton Conner; Ned Pope;
CC: Tom Bateman; jayfacemire@collinsmediation.org;
Subject: Re: Update on Reports

Jay
 Welcome aboard!!!

John

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

From: Ned Pope
To: 'Burton Conner'; 'Bailey, Jennifer'; 'Terry Terrell'
Cc: 'John Kuder'; 'Tom Bateman'; jayfacemire@collinsmediation.org
Sent: Tuesday, February 16, 2010 4:49 PM
Subject: Update on Reports

Judges,

I'd like to take this opportunity to introduce you to a new member of our staff. His name is Jay Facemire and he will be serving as the senior management analyst for the mediation program. He comes to us from DFS and has extensive experience in contract management and statistical analysis.

From this point forward he will be responsible for generating and sending all statistical reports, including those customized to your particular circuit, to you, your JA, and Court Administrator as requested.

Please let me know how frequently you'd like to receive these reports and we will schedule it to your preference going forward.

Thanks
 -Ned

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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This message was sent with High Importance.

From: Judge Terrell **Sent:** Wed, 17 Feb 2010 13:21:00 GMT
To: Judge Bailey; Burton Conner;
Subject: FW: Residential Mortgage Foreclosure Mediation Model Administrative Order

[1st Cir MAO Draft 2-16-10.docx \(417Kb\)](#)

This e-mail was just sent out to First Circuit judges, JA's, and staff.

TDT

From: Judge Terrell
Sent: Wednesday, February 17, 2010 1:17 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 Heflin; 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 Rimmer; Judge Santurri; Judge Shackelford; Judge Simon; Judge Stone; Judge Swanson; Judge Ward; Judge Wells
Cc: Robin Wright; Keri Igney; ESC-JA's; SRA-JA's; OKA-JA's; WAL-JA's; 'John kuder'; 'Kim Skievaski'
Subject: Residential Mortgage Foreclosure Mediation Model Administrative Order
Importance: High

Here it is!

Judges Jennifer Bailey, 11th Circuit Civil Division Administrative Judge, Burton Conner, 19th Circuit Administrative Judge, and I have been working on minor revisions to the Supreme Court approved Residential Mortgage Foreclosure Mediation Model Administrative Order (MAO) for several weeks.

Attached is the MAO adapted to the First Circuit. The highlighted areas in the MAO are the clarifications that have identified which provide a more logical, structured progression of filing and scheduling. It includes a grandfather clause which permits our pilot project to continue for 120 days while mediators comply with required training. It includes the requirement that mediators designate with the Program Manager their willingness to mediate at a specific site or sites in the First Circuit which we expect will mean local mediators will predominate. It provides a clear breakdown in monies to go to the Program Manager and to the required foreclosure counseling provider. It directs to Plaintiff to input "Form A" information in the Program Manager's data base instead of allowing the form to be faxed as permitted in the First Circuit pilot project AO which has been problematic for the Collins Center. Also included are the Supreme Court approved forms which have been adapted for use in the First Circuit. There are virtually no revisions to them of any moment.

The MAO with the suggested clarifications has been provided to staff at the Supreme Court, and no problems have been identified.

Regarding the grandfather provision, as you saw from the statistics forwarded yesterday, the pilot projects are successful in keeping many homeowners in their home. Although the pilot projects' only enforcement tool is refusal to grant summary judgment if the Plaintiff has not complied with the requirement of First Circuit pilot project AO09-18, it would seem to be contrary to the emphasis and priority the Supreme Court has established on the owner occupied homeowner foreclosure crisis to disband the pilot projects just so the enforcement tools can be used.

On the mediator training issue, courses are already being scheduled. One is in early March in Tampa. In addition, many individuals took training to mediate pilot project cases. We understand that supplemental training programs are being developed which pilot project trained mediators will be able to take to establish

compliance with Supreme Court AO without having to take the entire course; thus the 120 day window should be ample time to allow them to come into full compliance.

You may recall a recent e-mail where it was reported that the Collins Center will set up a separate mediation site in Okaloosa County to address the inequity of having East side borrowers having to travel to mediate in Pensacola.

Please let me know whether you see any other issues or language that should be addressed.

Efforts are being coordinated for the Chief Judges of the three pilot project circuits to jointly sign the revised MAO in each circuit at 11:00 a.m. CT and 12:00 a.m. ET Friday February 26 in a video hook up. The Chief Justice may participate by video as well. The point is for the courts to emphasize the importance we place on trying in the best way we can to help with the on-going foreclosure crisis. If you have the time, please attend the signing ceremony if it takes place. The location will be identified once agreement is reached that a joint signing ceremony will take place. You will be kept informed.

TDT

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From: Judge Terrell **Sent:** Wed, 17 Feb 2010 14:23:38 GMT
To: Judge Brown
Subject: RE: Residential Mortgage Foreclosure Mediation Model Administrative Order

John,
 Glad you can make it. I'll see you Friday.
 Terry

From: Judge Brown
Sent: Wednesday, February 17, 2010 1:37 PM
To: Judge Terrell
Subject: RE: Residential Mortgage Foreclosure Mediation Model Administrative Order

Terry:
 I have heard concerns about not having a location for the mediations here in Okaloosa County.
 Thank you for all of your very hard work to benefit all of us and I will see you Friday.

JB
 John T. Brown
 Circuit Court Judge
 1250 N. Eglin Parkway, Suite C-125
 Shalimar, Florida 32579
 OFFICE (850) 651-7470
 FAX (850) 609-3073

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Cc: Robin Wright; Keri Igney; ESC-JA's; SRA-JA's; OKA-JA's; WAL-JA's; john kuder; Kim Skievaski
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Importance: High

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TDT

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From: Keri Igney **Sent:** Thu, 18 Feb 2010 14:45:11 GMT
To: Robin Wright; ESC-Judges; OKA-Judges; SRA-Judges; WAL-Judges;
CC: ESC-JA's; Brooke Jones; OKA-JA's; SRA-JA's; WAL-JA's;
Subject: Agenda - Circuitwide Judges' Meeting - February 19

 **CW JUDGES MEETING FEBRUARY 19, 2010.wpd (16Kb)**

Judges:

Enclosed is the agenda for the Circuitwide Judges' Meeting scheduled for tomorrow, February 19.

Keri

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

CIRCUITWIDE JUDGES' MEETING
Friday, February 19, 2010
1:30 p.m.

In attendance:
MultiMedia Room
M.C. Blanchard Judicial Building

Via teleconference:
Dial 1-888-808-6959
When prompted, enter conference code 9302061358

AGENDA

- | | | |
|---|--|---------------------------|
| ➤ | Welcome | Chief Judge Terry Terrell |
| ➤ | Introduction of Judge David Rimmer | Chief Judge Terry Terrell |
| ➤ | Bridges in the Courtroom
Judicial Ride Along Program
Inside the Courts | Judge Ross Goodman |
| ➤ | Cash Only Bonds for Misdemeanor
Worthless Checks | Judge Paul Rasmussen |
| ➤ | Residential Mortgage Foreclosure - MAO | Chief Judge Terry Terrell |
| ➤ | Judicial Resources Site Visit - March 18, 2010 | Chief Judge Terry Terrell |
| ➤ | County Updates: | |
| | ◆ Escambia County | Judge Rasmussen |
| | ◆ Okaloosa County | Judge Stone |
| | ◆ Santa Rosa County | Judge Santurri |
| | ◆ Walton County | Judge Wells |
| ➤ | Adjourn | |



From: Shelia Sims
To: Judge Terrell
Subject: MAO Press Release for Preview

Sent: Mon, 22 Feb 2010 11:05:00 GMT

[MAO Signing First Circuit 0210.doc \(66Kb\)](#)

Judge,

The PIOs across the 3 circuits are working towards a “uniform” Press Release the attached adopts a good bit of information from the 11th Circuit

Please preview it and let me know of changes needed –

Once it is approved by you, I will send it to Craig Waters – and copy to the 11th and 19th

Thank you
shelia

Shelia A. Sims
Chief Deputy Court Administrator
First Judicial Circuit
190 Governmental Center, 5th Floor
Pensacola, FL 32502
(850) 595-4400
(850) 595-0360 fax

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MEDIA ADVISORY



First Judicial Circuit of Florida

For Immediate Release

February 22, 2010

Contact: Shelia Sims, Chief Deputy Court Administrator
Phone (850) 595-4400 Fax (850) 595-0360

IN HISTORIC RESPONSE TO FORECLOSURE CRISIS, CHIEF JUDGES FROM THREE FLORIDA COURT SYSTEMS TO SIMULTANEOUSLY IMPLEMENT MEDIATION PROGRAMS FOR FORECLOSURE CASES

For the first time in the history of the Florida courts, the Chief Judges from three Florida court systems will participate in a joint commemorative ceremony, linked by videoconferencing technology, to simultaneously sign administrative orders that will implement managed mediation for all foreclosure cases filed in their circuits.

They are: Chief Judge Terry D. Terrell of the 1st Judicial Circuit (Escambia, Okaloosa, Santa Rosa and Walton Counties); Chief Judge Joel H. Brown of the 11th Judicial Circuit (Miami-Dade County), and Chief Judge Steven J. Levin of the 19th Judicial Circuit (Indian River, Martin, Okeechobee and St. Lucie Counties).

This simultaneous signing ceremony will take place at 11 a.m. (CST) on Friday, February 26, 2010, in Courtroom 405 of the M.C. Blanchard Judicial Center, 190 Governmental Center, Pensacola, Florida 32502.

Members of the media are welcome to attend, and a media availability session will take place immediately after the signing ceremony, where Chief Judge Terry D. Terrell will be happy to answer questions from the media about the significance of these administrative orders in the handling of foreclosure cases in the First Judicial Circuit (Escambia, Santa Rosa, Okaloosa and Walton Counties)

Background Information: For the past several years, Florida's courts have been crushed under a deluge of new foreclosure filings. On March 17, 2009, Kim A. Skievaski, Chief Judge of the First Judicial Circuit signed Administrative Order 2009-18 IN RE: Mediation Case Management Order and Mandatory Referral of Residential Mortgage Foreclosure Cases to Mediation, which implemented mandated mediation for all future foreclosure filings in an effort to streamline case flow and provide opportunities for homeowners and lenders to discuss resolution as early as possible in the life of a foreclosure case.

At about the same time, the Florida Supreme Court commissioned a task force to study the foreclosure crisis and come up with recommendations to be implemented statewide. Judge Bailey was appointed Chair of that task force.

Based on the recommendations of the task force, the Florida Supreme Court established a Model Administrative Order (MAO), which promotes managed mediation for all courts statewide, and promotes consistency in the handling of foreclosure cases statewide. The MAO is very similar to the programs previously initiated by the 1st, 11th and 19th Circuits and includes enhancements to improve the effectiveness of managed mediation.

The commemorative signing ceremony on Feb. 26th is a joint effort by the Chief Judges of these three court systems to promote the expansion of managed mediation for residential mortgage foreclosure cases statewide and to encourage other court systems to follow suit.

Chief Judge Terrell will provide more detailed information during the media availability session on Feb. 26th.

In order to ensure adequate accommodations, members of the media are encouraged to RSVP to Shelia Sims, Chief Deputy Court Administrator for the First Judicial Circuit Courts, by telephone at (850) 595-4400, or via e-mail at shelia.sims@flcourts1.gov

#

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February 22, 2010

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Phone (850) 595-4400 Fax (850) 595-0360

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From: Shelia Sims **Sent:** Mon, 22 Feb 2010 11:53:00 GMT
To: Judge Terrell
Subject: RE: MAO Press Release for Preview

MAO Signing First Circuit 0210.doc (66Kb)

Sir,

The change has been made --

I like 3/29 ... I am usually of the "opinion" that "good news" gets lost in media mania on Fridays ☺

With your approval -- I will share the "draft" with PIOs of the 11th, 19th and Craig Waters. RELEASE to media will remain on HOLD until otherwise directed.

shelia

From: Judge Terrell
Sent: Monday, February 22, 2010 11:20 AM
To: Shelia Sims
Subject: RE: MAO Press Release for Preview

Insert on page 2, first paragraph, last line: "11th Circuit Civil Administrative Judge Jennifer Bailey" for "Judge Bailey".

We are resolving an effective date issue, and it looks like we may settle on March 29, 2010. I will let you know. Do not release yet.

TDT

From: Shelia Sims
Sent: Monday, February 22, 2010 11:05 AM
To: Judge Terrell
Subject: MAO Press Release for Preview

Judge,

The PIOs across the 3 circuits are working towards a "uniform" Press Release the attached adopts a good bit of information from the 11th Circuit

Please preview it and let me know of changes needed --

Once it is approved by you, I will send it to Craig Waters -- and copy to the 11th and 19th

Thank you
shelia

Shelia A. Sims
Chief Deputy Court Administrator
First Judicial Circuit
190 Governmental Center, 5th Floor
Pensacola, FL 32502
(850) 595-4400
(850) 595-0360 fax

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From: Judge Terrell
To: Robin Wright
Subject: Please review and critique

Sent: Mon, 22 Feb 2010 12:25:00 GMT

Gentlemen,

While we move toward signing of the Model Administrative Order from the Supreme Court as adapted to specific circuits, I want to be prepared for any questions that might arise. You have indicated that a separate mediation site would be established in Okaloosa County to accommodate all the folks from the eastern end of this 100 mile wide circuit who currently have to come to Pensacola, the western-most community in the circuit, for their mediations sessions. It would be informative and useful if some time line could be established.

As to reports, please continue to send them to me and to Court Administrator Robin Wright. Mrs. Wright's e-mail address is: Robin.Wright@FLCOURTS1.GOV

Aggregate monthly reports, further broken down by each County in the First Circuit, with the current information would be useful in determining where any corrective measures need to be taken. Would submission of the reports by the 10th or 15th of the month following filing, to allow data mining and collating, be reasonable for your staff?

We are still trying to resolve the most effective management approach, besides setting hearings with the assigned judge, to deal with any case specific problems.

We have submitted a legislative budget request to obtain funding for a case manager and use of a single judge who could work all RMFM Program cases circuit-wide, but, even if approved, that may not take effect until July 1.

In the meantime, the requirement of the MAO that "Form A" information be properly entered on the Collins Center platform should resolve the faxing problem that was presented by the 2009 First Circuit Pilot Project Administrative Order.

We expect John Kuder, as the Collins Center liaison, will continue to work with the Clerk's across the circuit and let us know if problems are developing which need attention.

Thank you for all you and your staff are doing to help bring some much needed relief to the residential mortgage foreclosure crisis. With state-wide implementation and increasing public awareness of and trust in the program, we can demonstrate that the court system is responsive to the needs of the State and its citizens.

TDT

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From: Shelia Sims **Sent:** Tue, 23 Feb 2010 09:46:06 GMT

To: Mike Doubek; Craig Waters; Bryan Newkirk; Calendar; Cristy; Deborah Kennedy; Don Chinery; Gospel; Greg Neumann; J. Syke; Lynn West; Mike Bates; Paula Petersen; prod2; Sandra; Sonya Smith; Tom McLaughlin; TV12; wcoanews; Dawn Norris (OWBAR); Fletcher; Randy Wood; Sun News Walton County; David Coppock; news; Linda Jones; Jim Roberts; Ryan Arvay; Robbyn B; Jamie Burch; NBC; Jennifer Copus (OKI/Wal Bar President); PIO Escambia;

Subject: Historic Court Action - Press Release

First
Judicial Circuit of Florida

For Immediate Release
February 22, 2010
Contact: Shelia Sims, Chief Deputy Court Administrator
Phone (850) 595-4400 Fax (850) 595-0360

**IN HISTORIC RESPONSE TO FORECLOSURE CRISIS,
CHIEF JUDGES FROM THREE FLORIDA COURT SYSTEMS
TO SIMULTANEOUSLY IMPLEMENT MEDIATION PROGRAMS
FOR FORECLOSURE CASES**

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The commemorative signing ceremony on Feb. 26th is a joint effort by the Chief Judges of these three court systems to promote the expansion of managed mediation for residential mortgage foreclosure cases statewide and to encourage other court systems to follow suit.

Chief Judge Terrell will provide more detailed information during the media availability session on Feb. 26th.

In order to ensure adequate accommodations, members of the media are encouraged to RSVP to Shelia Sims, Chief Deputy Court Administrator for the First Judicial Circuit Courts, by telephone at (850) 595-4400, or via e-mail at shelia.sims@flcourts1.gov

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From: Shelia Sims **Sent:** Tue, 23 Feb 2010 09:46:06 GMT
To: [Mike Doubek](#); [Craig Waters](#); [Bryan Newkirk](#); [Calendar](#); [Cristy](#); [Deborah Kennedy](#); [Don Chinery](#); [Gospel](#); [Greg Neumann](#); [J. Syke](#); [Lynn West](#); [Mike Bates](#); [Paula Petersen](#); [prod2](#); [Sandra](#); [Sonya Smith](#); [Tom McLaughlin](#); [TV12](#); [wcoanews](#); [Dawn Norris \(OWBAR\)](#); [Fletcher](#); [Randy Wood](#); [Sun News Walton County](#); [David Coppock](#); [news](#); [Linda Jones](#); [Jim Roberts](#); [Ryan Arvay](#); [Robbyn B](#); [Jamie Burch](#); [NBC](#); [Jennifer Copus \(Ok/Wal Bar. President\)](#); [PIO Escambia](#);
Subject: Historic Court Action - Press Release

First

Judicial Circuit of Florida

For Immediate Release

February 22, 2010

Contact: Shelia Sims, Chief Deputy Court Administrator
Phone (850) 595-4400 Fax (850) 595-0360

**IN HISTORIC RESPONSE TO FORECLOSURE CRISIS,
CHIEF JUDGES FROM THREE FLORIDA COURT SYSTEMS
TO SIMULTANEOUSLY IMPLEMENT MEDIATION PROGRAMS
FOR FORECLOSURE CASES**

For the first time in the history of the Florida courts, the Chief Judges from three Florida court systems will participate in a joint commemorative ceremony, linked by videoconferencing technology, to simultaneously sign administrative orders that will implement managed mediation for all foreclosure cases filed in their circuits.

They are: Chief Judge Terry D. Terrell of the 1st Judicial Circuit (Escambia, Okaloosa, Santa Rosa and Walton Counties); Chief Judge Joel H. Brown of the 11th Judicial Circuit (Miami-Dade County), and Chief Judge Steven J. Levin of the 19th Judicial Circuit (Indian River, Martin, Okeechobee and St. Lucie Counties).

This simultaneous signing ceremony will take place at 11 a.m. (CST) on Friday, February 26, 2010, in Courtroom 405 of the M.C. Blanchard Judicial Center, 190 Governmental Center, Pensacola, Florida 32502.

Members of the media are welcome to attend, and a media availability session will take place immediately after the signing ceremony, where Chief Judge Terry D. Terrell will be happy to answer questions from the media about the significance of these administrative orders in the handling of foreclosure cases in the First Judicial Circuit (Escambia, Santa Rosa, Okaloosa and Walton Counties)

Background Information: For the past several years, Florida's courts have been crushed under a deluge of new foreclosure filings. On March 17, 2009, Kim A. Skievaski, Chief Judge of the First Judicial Circuit signed Administrative Order 2009-18 IN RE: Mediation Case Management Order and Mandatory Referral of Residential Mortgage Foreclosure Cases to Mediation, which implemented mandated mediation for all future foreclosure filings in an effort to streamline case flow and provide opportunities for homeowners and lenders to discuss resolution as early as possible in the life of a foreclosure case.

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From: [Shelia Sims](#) **Sent:** Tue, 23 Feb 2010 09:53:05 GMT
To: [ESC-JA's; Lisa Bernau; ESC-Judges; OKA-JA's; OKA-Judges; SRA-JA's; SRA-Judges; Susan Dobinson; WAL-JA's; WAL-Judges; Barry Brooke; Rita Davis; angella_meek@co.escambia.fl.us; Jennie Pistole; SRA-Court Admin; debbie.shugart@gal.fl.gov; Sherry A. Nix; ESC-Court Admin Staff; OKA-Court Admin Staff; WAL-Court Admin Staff; Laura Montoya; kimberly weekley; Frederick L. Alford; greg ates;](#)
Subject: Press Release - Invitation

Judges and court staff that are available to attend are invited and encouraged to attend – supervisors, please share with your staff as deemed appropriate. Thank you.

**First
Judicial Circuit of Florida**

**For Immediate Release
February 22, 2010**

Contact: Shelia Sims, Chief Deputy Court Administrator
Phone (850) 595-4400 Fax (850) 595-0360

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From: Tom Bateman **Sent:** Thu, 25 Feb 2010 17:11:18 GMT
To: Judge Terrell; Jennifer Bailey; ;
CC: Tom Bateman
Subject: Re: 11th Circuit's AO Exhibit 2 Updated Telephone Number and AO Comparison with 1st and 19th

[1st Circuit's Foreclosure Managed Mediation Program AO.doc \(665Kb\)](#) [19th Circuit's Foreclosure Managed Mediation Program AO.doc \(667Kb\)](#) [11th Circuit's Foreclosure Managed Mediation Program AO.doc \(749Kb\)](#)

Judges, I just finished my mediation.

I've corrected the toll free telephone number for the Collins Center in Exhibit 2 in the 11th's AO; the other two are correct. Judge Bailey you (or someone) will have to delete the old number and the highlight for the final clean printed version.

I note that the three AO's do not use the same language in Section 6. I've attached the latest version of each for you. I will do a "side-by-side" document comparison tonight, point out to all of you if there if there are any other areas that might be inconsistent and email them back out to you so you have them first thing in the morning.

I'll be in the office early tomorrow morning to be available to you if you need me. I have a minor surgical procedure at 10:30 so the earlier you can get up with me the better.

Tom

>>> "Bailey, Jennifer" <JBailey@jud11.flcourts.org> Thursday, February 25, 2010 2:11 PM >>>

Only change what makes you scream at this point, please Ugggughh.

From: Kearson, Linda
Sent: Thursday, February 25, 2010 1:07 PM
To: Bailey, Jennifer; Bermudez-Goodrich, Doris
Subject: AO

Here is the recently revised AO.

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From: Tom Bateman
Sent: Fri, 26 Feb 2010 13:31:19 GMT
To: Judge Terrell; Jennifer Bailey; Burton Conner;
Subject: RE: THB III's Comparison of the AO's

Congratulations to you all. No kidding ... you guys have done yourselves and the courts a great service, in my humble opinion.

Tom

>>> Burton Conner <ConnerB@circuit19.org> Friday, February 26, 2010 2:26 PM >>>

The deed is done!!!! What a relief! Now we will how this puppy grows!!!

Have a Great Weekend everyone!

Burton

From: Tom Bateman [mailto:TBateman@lawfla.com]
Sent: Friday, February 26, 2010 2:21 PM
To: Burton Conner; Judge.Terrell@FLCOURTS1.GOV; Jennifer Bailey
Subject: RE: THB III's Comparison of the AO's

I'm back from the doctor. Were you all able to pull it off?

>>> "Bailey, Jennifer" <JBailey@jud11.flcourts.org> Friday, February 26, 2010 10:38 AM >>>
STOP THE MADNESS. We are going to press in the 11th. NO MORE CHANGES ;->

From: Burton Conner [mailto:ConnerB@circuit19.org]
Sent: Friday, February 26, 2010 8:50 AM
To: Tom Bateman; Judge.Terrell@FLCOURTS1.GOV; Bailey, Jennifer
Subject: RE: THB III's Comparison of the AO's

You are right...report should be "reports". Thanks for catching mine as well. Reminds me of when I was revising drafts of the MAO for the TF. No matter how many times I read it, I always found typos.

Burton

From: Tom Bateman [mailto:TBateman@lawfla.com]
Sent: Friday, February 26, 2010 8:45 AM
To: Burton Conner; Judge.Terrell@FLCOURTS1.GOV; JBailey@jud11.flcourts.org
Subject: RE: THB III's Comparison of the AO's

Good catch, Burton. I cut and pasted everything and missed the repeating sentence. The caps were in one of the versions I guess.

There is a typo in your new paragraph in section 20 in the word "report" which looks like should be "reports":

Section 20 (added as last paragraph):

The Program Manager shall provide to the Clerk of the Courts all original

compliance reports, together with the activity report; all original mediator's reports; and any original motions submitted to the Program Manager.

Otherwise, it looks good to me. Tom

>>> Burton Conner <ConnerB@circuit19.org> Friday, February 26, 2010 8:21 AM >>>

Tom,

Your draft of Section 6 has a typo with the same sentence repeated:

The borrower must meet in person or by telephone with an approved mortgage foreclosure counselor no later than 30 days after the borrower is initially in contact with the Program Manager. . The borrower must meet in person or by telephone with an approved mortgage foreclosure counselor no later than 30 days after the borrower is initially in contact with the Program Manager.

Plus, it has a typo I made by capitalizing "Plaintiff's representative" when that term should be in all lower case. I am attaching Section 6 to this email, although I think Terry and I have the same Section 6 without the typos. Jennifer may want to cut and paste (revising the font) the attachment for her convenience.

As far as the addition that the 11th has in Section 20 of their version, it seems to me they need that language because of some of their contract requirements. The problem for my circuit, and I suspect Terry has the same situation, is that we don't have a Compliance Officer in our circuit. I thought I drafted Section 20 broadly enough to allow each Chief Judge to decide what kind of reports they wanted and the format of those reports (to me the paragraph Jennifer has regarding "performance reports" is covered by the language I drafted: "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.*"

However, I like the language in her last paragraph (except for the MPM filing the settlement agreements) and I would suggest that Terry and I add the following paragraph at the end of Section 20 for our circuits:

The Program Manager shall provide to the Clerk of the Courts all original compliance reports, together with the activity report; all original mediator's report; and any original motions submitted to the Program Manager.

Jennifer and Terry, what do you think?

Burton

From: Tom Bateman [mailto:TBateman@lawfla.com]

Sent: Thursday, February 25, 2010 9:50 PM

To: Judge Burton Conner <ConnerB@circuit19.org>; Judge.Terrell@FLCOURTS1.GOV; JBailey@jud11.flcourts.org; Tom Bateman

Subject: THB III's Comparison of the AO's
Importance: High

Judges,

I've compared the documents and they are very close to being nearly identical. There are two areas that you need to address though.

The first is Section 6. Attached is a document I created for you to merely cut and paste into each of your AO's to be sure they are the same. One version is in the 11th's font and the other is for the other two. The language in each is identical and consists of the last version that Judges Terrell and Conner finalized earlier this evening. Judge Bailey, that section in your AO had not been updated at all for some reason; so, this will get yours in line with the other two pursuant to our phone call of the other day and Judge Terrell and Conner's subsequent refinements.

The second is the language in the 11th's AO at the end of section 20. The 11th has additional language the other two do not have. It has to do with additional reporting requirements for the MPM. I've asked Judge Bailey to reconsider the requirement that the settlement agreements be filed by the MPM as the settlement in civil cases are not usually filed - the plaintiff's attorney usually retains the original and provides a copy to the defense. Here is the language for your consideration:

The Program Manager must submit performance reports to the Chief Judge, the Administrative Judge of the General Jurisdiction Division and the RMFM Compliance Officer.

Additional reports that must be submitted by the Program Manager directly to the RMFM Compliance Officer include copies of: all noncompliance reports, together with the activity report; all reports of non-appearance at mediation; all reports of invalid Form A's; and all complaints with the mediator's report attached and settlement agreement, if applicable.

The Program Manager shall provide to the Clerk of the Courts all original compliance reports, together with the activity report; all original mediator's reports and settlement agreements; and any original motions submitted to the Program Manager.

Other than these two areas, your AO's, except for a few random words, appear to me to be the same. Also, I'm sending by separate email the latest version of the AO I have from each of you.

I'll be in my office early in the morning (by 8:00) if I can be of further assistance to you.

Tom

>>> Tom Bateman 02/25/10 6:09 PM >>>

Judges, I just finished my mediation.

I've corrected the toll free telephone number for the Collins Center in Exhibit 2 in the 11th's AO; the other two are correct. Judge Bailey you (or someone) will have to delete the old number and the highlight for the final clean printed version.

I note that the three AO's do not use the same language in Section 6. I've attached the latest version of