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Pinellas Establishes Court Section to Work Only on Backlogged Foreclosure Cases

CLEARWATER – A judge’s caseload will be distributed to other Civil Division judges so that he can work fulltime on clearing the more than 16,000 foreclosure cases that are backlogged in Pinellas County.

Effective Sept. 1, Circuit Judge Thomas M. Minkoff’s court dockets and calendars will be filled with foreclosure cases that were filed in Pinellas prior to Jan. 1 of this year. Since the beginning of the year, Circuit Judge William Burgess has had a similar assignment in Pasco County, where the backlog is an additional 13,000 cases. Most of the backlog is residential foreclosures, but Judge Minkoff will also be dealing with commercial foreclosures that were filed prior to Jan. 1.

Chief Judge J. Thomas McGrady said caseloads are being reassigned to tackle the backlog built up by the rash of foreclosures that began with the economic downturn. “The courts have been stressed to deal with the avalanche of foreclosures, and despite determined efforts by judges and staff, we still have this tremendous backlog in our circuit and statewide,” he explained.

At a June 14 meeting with more than 100 attorneys who represent lenders and borrowers in foreclosure matters, McGrady discussed how the new section will function and outlined other procedures being implemented to cut the time that cases are allowed to linger in court. “The Legislature placed a priority on decreasing the backlog and provided statewide funding for that purpose,” Judge McGrady said.

The \$9.5 million the state allocated to the Florida’s courts for the fiscal year that begins July 1 does not allow for any additional judges. But the Sixth Circuit’s \$775,000 will be used for senior judge days, additional case managers and magistrates who will be hired into temporary positions. Senior judges are fully-qualified judges who assist the courts when active judges are ill, have lengthy trials, or if other unexpected situations arise, such as the heavy caseloads created by the foreclosure cases.

The funds are from money that Florida received from the National Mortgage Settlement, provided by large lenders partially responsible for the large number of foreclosures in Florida and other states. In addition to funding the courts’ plans to clear the backlog, the Legislature provided a two-year allocation of \$9.7 million to the clerks’ offices around state, which also have been over-run with the filings. Another \$5.3 million (including \$70,000 for the Sixth Circuit) was designated for new technology that will help the courts better track the cases that linger.

During the meeting with attorneys, Judge McGrady explained the foreclosure section and announced other changes in foreclosure procedures. Some changes are mandated by a new law passed by the 2013 Legislature; others better utilize resources available to the Circuit.

Mediation continues to be a recommended way for homeowners to work toward resolving foreclosure actions. But newly filed cases will no longer be automatically referred to mediation. Once an action is filed, the lender or borrower must file a motion for mediation. Judge McGrady said, "Mediation has changed from an opt out program to an opt in program. Employees of our mediation managers were spending too much time tracking down foreclosure defendants who were not interested in mediating the issues."

Judge McGrady recommended that mediation be sought by anyone who has a foreclosure filed against them. Mediation Managers, Inc. continues to be the Circuit's foreclosure program manager, and the lenders remain responsible for the initial fees charged for mediation.

Any defendant/borrower may initiate the mediation by filing a motion with the Court. Other details of the mediation program are spelled out on the foreclosure page (<http://www.jud6.org/LegalCommunity/MortgageForeclosures.html>) of the Circuit's web site.

Judge McGrady strongly recommended that anyone served with a foreclosure action – or any court action – contact an attorney. But for defendants who represent themselves he said the web site can be of major assistance. "All the procedures are spelled out, and all the necessary forms are there," he said.

In addition to the designated section and tweaks on the mediation process, Judge McGrady implemented policies that:

- Assign all foreclosure cases filed after Jan. 1 of this year to the sections that have absorbed other civil cases previously assigned to Judge Minkoff;
- Utilize the authority of magistrates hired into temporary positions to help manage foreclosure cases by conducting evidentiary hearings and case management conferences, setting trial dates, and recommending case dispositions;
- Institute procedures with which the Court will more closely monitor the progression of cases from filing to the sale of foreclosed-on property, including lenders' repeated cancellations of scheduled sales.

Two significant changes that are now in effect under the law signed by Gov. Rick Scott earlier this month are:

- 1) Lienholders – including homeowner and condominium associations – are now empowered to foreclose on properties, meaning they have the same standing as lenders in moving toward a trial date that could result in a foreclosure sale.
- 2) With status equal to the lenders, lienholders will be able to expedite the process without the lenders doing anything. For cases filed under the new rules and not responded to within the 20 days, either the lienholder or the lender can initiate an order for the defendant to show cause why the Court should not enter a final judgment.

"All of these procedures are designed to lower the number of backlogged cases," Judge McGrady said. "Lack of action, the responsibility of the lender/attorneys, clogs the courts and makes it more difficult to serve businesses and others who are litigants in the civil law sections of our Circuit."

In closing, Judge McGrady once again urged defendants in foreclosure cases to take advantage of mediation. "It's the best way to seek a settlement, especially for those homeowners who feel frustrated by the lenders' unwillingness to speak with them."