



THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
OF FLORIDA

CHAMBERS OF
JACK H. COOK
CIRCUIT COURT JUDGE

COUNTY COURTHOUSE
WEST PALM BEACH, FLORIDA 33401
561/355-3730

October 14, 2009

The Hon. Chief Justice Peggy A. Quince
Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399-1925

Re: Response to the Report of Supreme Court Task Force
on Residential Foreclosures

Dear Chief Justice Quince,

Thank you for the opportunity to respond to the report of the Residential Foreclosure Task Force. We applaud the obvious time and effort expended by the Task Force in preparing and producing their report, but our experience as judges handling foreclosures in the 15th Judicial Circuit results in our being largely in agreement with the Minority Reports. We suggest the following considerations.

First, we believe that the Managed Mediation approach as outlined in the Majority Report is expensive and has not proven itself to be more efficient than the approach presently being used in this circuit. There is no doubt that all of the circuits are facing a crisis in the number of foreclosures already in our system and in the number of new filings each day. The several Circuits in Florida have adopted different approaches to address the crisis. This circuit formed a Foreclosure Committee in conjunction with the Palm Beach County Bar Association. The Committee was comprised of judges handling foreclosure cases and attorneys for both lenders and debtors. The Committee heard a presentation by the Collins Center and voted not to recommend that the Circuit contract with Collins. Many of the reasons for this are contained within the Haworth Minority Report. We believe that absent objective data showing that managed mediation works better than our present system the \$750.00 fee per

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case is wasteful. The 15th Circuit has adopted administrative procedures that allow a defendant to opt into mediation even before an answer is due. Additionally, if for any reason the defendant does not opt into mediation at the earliest opportunity we routinely order mediation upon request. Our mediation process requires defendants to provide financial information in advance of the mediation in order to maximize the likelihood of a successful mediation. Anecdotally the plaintiff and defense bar estimates that 85% of their mediations are successful. We generally cap our mediation fees at \$700.00 with each party responsible for ½. Defense attorneys are reporting that usually the mediation costs less than that, usually around \$500.00. We have occasionally had defendants complain that they cannot afford the mediation fee, in which cases we generally order the lender to front the costs. Because this is an infrequent occurrence we have never had a lender object.

Second, we believe that the point made in the Haworth Minority Report that many homeowners can afford to pay ½ of the mediation fee is valid, as is the point that when one invests in a process he or she is more likely to exert their best efforts to make it work. Additionally, many home owners are just not interested in reworking their loans. Property values have decreased to such an extent that these homeowners are willing to walk away from the loan rather than strap themselves for years to pay off a loan of perhaps twice the value of their home. To add an additional cost of \$750.00 to cases where neither party is interested in mediation amounts to economic waste at a time when there is already too much economic waste associated with foreclosures. In our view this would exacerbate the crisis rather than alleviate it. The minority report, on page 3, outlines the cost of mandating the managed mediation process statewide as \$375 Billion.

Third, the 15th Circuit has had a Foreclosure Division for many years. Until the present crisis it was run by the Chief Judge who spent maybe 1 day a

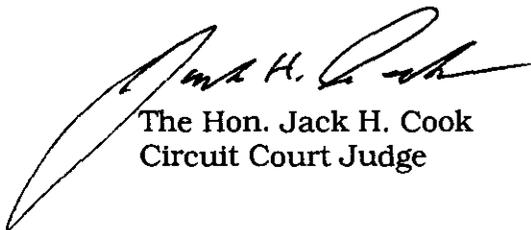
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week doing foreclosures. In those days of yore yearly foreclosure filings were about 5,000 cases. Presently foreclosure filings are running between 2100 and 2700 per month. The Circuit has been imaginative in addressing this crisis. Judge Sasser has adopted an innovative on line approach to scheduling summary judgment hearings that involves a minimum of court staff involvement. We run an 8:45 foreclosure motion calendar that allows us to deal quickly with most non-dispositive motions. Our general Civil Division Judges contribute one day a month to doing summary judgment hearings and beginning in November our County Court Civil Judges will contribute ½ day a week to doing summary judgments. Last month our dispositions were only about 100 cases short of our filings for the month and when the County Court Judges begin to help we should begin to reduce our 47,000 case backlog.

We believe it is important to confront the foreclosure crisis in a timely manner. Our process allows those homeowners who desire to remain in their homes to meet with their lender and attempt to rework their loans. Usually this can be accomplished. At the same time our process does not burden every filing with an additional cost for a process of unknown effectiveness and our process allows those cases that are going to go for a foreclosure judgment to do so in a timely manner. This benefits not only the lenders but also the local communities that are not receiving tax revenue as well as condominium and home owner associations that are not receiving needed assessment payments.

We urge the Supreme Court not to impose unproven constraints upon our ability to deal with this crisis in Palm Beach County.

Respectfully Submitted,



The Hon. Jack H. Cook
Circuit Court Judge



The Hon. Meenu Sasser
Circuit Court Judge