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**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO THE  
FLORIDA RULES OF CIVIL PROCEDURE  
—MAGISTRATES**

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**CASE NO. :**

**EMERGENCY PETITION OF THE  
TRIAL COURT BUDGET COMMISSION TO AMEND  
FLORIDA RULE OF CIVIL PROCEDURE 1.490**

The Trial Court Budget Commission (Commission), by and through its Chair, the Honorable Margaret O. Steinbeck, Circuit Judge, Twentieth Judicial Circuit, respectfully files this emergency petition proposing amendments to Rule 1.490, Florida Rules of Civil Procedure, based on recommendations of the Foreclosure Initiative Workgroup to reduce the mortgage foreclosure case backlog in the state courts.

**JURISDICTIONAL STATEMENT**

The Commission submits this petition pursuant to its authority under Rule 2.230(b)(6), Florida Rules of Judicial Administration. The Commission petitions the Court to adopt the proposed amendments to rule 1.490 pursuant to the Court's emergency rule amendment authority under rule 2.140(d), Florida Rules of Judicial Administration.

**BACKGROUND**

A significant number of mortgage foreclosure cases are pending in the trial courts and it is estimated that 680,000 new foreclosure cases will be filed over the next 3 years. In January 2013, the Commission established the Foreclosure Initiative Workgroup (Workgroup) to propose strategies to significantly reduce the mortgage foreclosure case backlog. The Commission on April 10, 2013, submitted the Workgroup's report, *Foreclosure Backlog Reduction Plan for the State Courts System, Recommendations of the Foreclosure Initiative Workgroup* (Report) to this Court.

The Workgroup's Report identified systemic problems associated with the processing of mortgage foreclosure cases. One of the problems identified in the Report is the limited availability of judicial resources to address the foreclosure case backlog, exacerbated by statutory provisions requiring retired judges to refrain from working as senior judges, except on a voluntary basis, for 12 months after retirement.

While the senior judge issue must be addressed by the Florida Legislature, the Workgroup has proposed expanded use of general magistrates as an alternative to senior judges to assist in processing foreclosure cases. The Workgroup recommended amendment of rule 1.490 to authorize referral of residential mortgage foreclosure cases to a general magistrate with the implied consent of the parties. Under the proposed amendments, parties would have the opportunity to object to the referral within 10 days of service of the order of referral.

## **EXPLANATION OF RULE PROPOSALS**

The Commission's proposed amendments to rule 1.490 are summarized below. The rule changes are shown in legislative format in Appendix A, and in a two-column chart in Appendix B. The proposed amendments were not published prior to submission to the Court.

### Current Rule

Current Rule 1.490 provides for the appointment of general and special magistrates, describes the powers and duties of magistrates, and states under what circumstances referral of matters to magistrates may occur. Subdivision (a) requires every person appointed as a general magistrate to be a member of The Florida Bar and to take an oath required of officers by the Florida Constitution, which must be recorded before the magistrate discharges the duties of the office. Subdivision (b) states procedures relating to special magistrates. Subdivision (c) provides that no reference shall be made to a magistrate without consent of the parties. Subdivision (d) provides that magistrates shall perform the duties of office under the direction of the court. Subdivision (e) provides that the court may require magistrates who are appointed to dispose of real or personal property to post bond and surety conditioned for the proper payment of all moneys that may come into their hands and for the due performance of their duties as the court may direct. Subdivision (g) provides that magistrates may not include in their report any statements of facts, accounts, charges, depositions, examinations, or answers used before the magistrate, but such matters should be identified to inform the court what items were used. Subdivision (h) provides that magistrates are required

to file a report with recommendations to be served on the parties, and that the parties may serve exceptions to the report within 10 days from the time the report is served on them. If no exceptions are timely filed and served, the court shall take appropriate action on the report. If exceptions are filed, they must be heard on reasonable notice by either party.

#### Proposed Amendments to Rule 1.490

The proposed amendments to rule 1.490 are intended to facilitate efficient referral of residential mortgage foreclosure cases to magistrates by incorporating the concept of implied consent to the referral, with an opportunity for parties to object within 10 days of service of the order of referral.

#### **1. Rule 1.490(a) – General Magistrates.**

The proposal amends subdivision (a) to state that the chief judge may appoint such number of magistrates to handle only residential mortgage foreclosure cases from among the members of the Bar in the circuit as are necessary to expeditiously preside over all actions and suits for the foreclosure of a mortgage on residential real property, and any other matter concerning the foreclosure of a mortgage on residential real property as allowed by the administrative order of the chief judge. The proposal, in addition, provides that magistrates appointed to handle residential mortgage foreclosure matters only shall not be required to give bond or surety.

No changes are made to Rule 1.490(b).

#### **2. Rule 1.490(c) – Reference.**

The proposal amends subdivision (c) to allow for referral of residential mortgage foreclosure cases to a magistrate with the implied consent of the parties. This proposal is modeled after rule 12.490(b), Florida Family Law Rules of Procedure. Under the proposal, parties would have the opportunity to object to the referral within 10 days of the service of the order of referral, or if the time set for hearing is less than 10 days after service of the order, the objection must be made before the hearing, or if the order is served within the first 20 days after service of process, the time to file an objection is extended to the time within which a responsive pleadings is due. The notice language advises the parties that failure to file a written objection to the referral within the applicable time period is deemed

to be consent to the referral, that review of the report and recommendations is by exceptions as provided under the rule, and a record, which includes a transcript of the proceedings, may be required to support exceptions.

The proposed amendments to this subdivision do not change the consent requirement for other civil cases.

### **3. Rule 1.490(d) – General Powers and Duties.**

The proposal amends subdivision (d) to prohibit magistrates from practicing law of the same case type in the court in the county or circuit the magistrate is presiding. This amendment applies to all magistrates, general and special, appointed under rule 1.490.

No changes are made to rule 1.490(e), (f), and (g).

### **EFFECTIVE DATE**

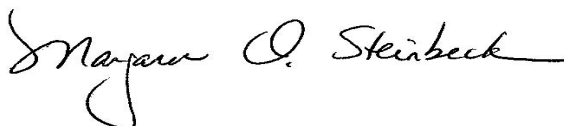
The Commission recommends that rule 1.490 be amended effective immediately.

### **CONCLUSION**

The Commission proposes the above-described amendments to rule 1.490 to facilitate expanded use of magistrates to assist in reduction of the residential mortgage foreclosure case backlog.

**WHEREFORE**, the Trial Court Budget Commission respectfully requests this Court consider and adopt the proposed amendments to rule 1.490.

Respectfully submitted this 23<sup>rd</sup> day of April, 2013.



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Honorable Margaret O. Steinbeck, Chair  
Trial Court Budget Commission

## **CERTIFICATE OF COMPLIANCE**

I certify that these rules were read against *West's Florida Rules of Court – State* (2012 Revised Edition).

I certify that this petition has been prepared in MS Word using Times New Roman 14-point font, which complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.100(1).

/s/ Susan Dawson

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- B. Proposed amendments to rule 1.490, Florida Rules of Civil Procedure  
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