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APPENDIX A

Proposed Rule 1.490 – Legislative Format

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FLORIDA RULES OF CIVIL PROCEDURE

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FLORIDA RULES OF CIVIL PROCEDURE

Rule 1.490

Magistrates

(a) General Magistrates. Judges of the circuit court may appoint as many general magistrates from among the members of the Bar in the circuit as the judges find necessary, and the general magistrates shall continue in office until removed by the court. The order making an appointment shall be recorded. Every person appointed as a general magistrate shall take the oath required of officers by the Constitution and the oath shall be recorded before the magistrate discharges any duties of that office. The chief judge of each judicial circuit shall appoint such number of magistrates to handle only residential mortgage foreclosures 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. Magistrates appointed to handle residential mortgage foreclosure matters only shall not be required to give bond or surety.

(b) Special Magistrates. The court may appoint members of The Florida Bar as special magistrates for any particular service required by the court, and they shall be governed by all the provisions of law and rules relating to magistrates except they shall not be required to make oath or give bond unless specifically required by the order appointing them. Upon a showing that the appointment is advisable, a person other than a member of the Bar may be appointed.

(c) Reference.

(1) No reference shall be to a magistrate, either general or special, without the consent of the parties, except consent to a magistrate for residential mortgage foreclosure actions and suits may be express or may be implied in accordance with the requirements of this rule.

(A) A written objection to the referral to a magistrate handling residential mortgage foreclosures must be filed within 10 days of the service of the order of referral.

(B) If the time set for the hearing is less than 10 days after service of the order of referral, the objection must be filed before commencement of the hearing.

(C) If the order of referral is served within the first 20 days after the service of the initial process, the time to file an objection is extended to the time within which to file a responsive pleading.

(D) Failure to file a written objection to a referral to the magistrate handling residential mortgage foreclosures within the applicable time period is deemed to be consent to the order of referral.

(2) The order of referral to a magistrate handling residential mortgage foreclosures shall be in substantial conformity with this rule and shall contain the following language in bold type:

A REFERRAL TO A MAGISTRATE FOR A RESIDENTIAL MORTGAGE FORECLOSURE MATTER REQUIRES THE CONSENT OF ALL PARTIES. YOU ARE ENTITLED TO HAVE THIS MATTER HEARD BEFORE A JUDGE. IF YOU DO NOT WANT TO HAVE THIS MATTER HEARD BEFORE THE MAGISTRATE, YOU MUST FILE A WRITTEN OBJECTION TO THE REFERRAL WITHIN 10 DAYS OF THE TIME OF SERVICE OF THIS ORDER. IF THE TIME SET FOR THE HEARING IS LESS THAN 10 DAYS AFTER THE SERVICE OF THIS ORDER, THE OBJECTION MUST BE MADE BEFORE THE HEARING. IF THIS 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 PLEADING IS DUE. FAILURE TO FILE A WRITTEN OBJECTION WITHIN THE APPLICABLE TIME PERIOD IS DEEMED TO BE CONSENT TO THE REFERRAL. REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE MAGISTRATE SHALL BE BY EXCEPTIONS AS PROVIDED IN THIS RULE. A RECORD, WHICH INCLUDES A TRANSCRIPT OF PROCEEDINGS, MAY BE REQUIRED TO SUPPORT THE EXCEPTIONS.

When a reference is made to a magistrate, either party may set the action for hearing before the magistrate.

(d) General Powers and Duties. Every magistrate shall perform all of the duties that pertain to the office according to the practice in chancery and under the direction of the court. Process issued by a magistrate shall be directed as provided by law. Hearings before any magistrate, examiner, or commissioner shall be held in the county where the action is pending, but hearings may be held at any place by order of the court within or without the state to meet the convenience of the witnesses or the parties. All grounds of disqualification of a judge shall apply to magistrates. Magistrates shall not practice law of the same case type in the court in any county or circuit the magistrate is appointed to serve.

(e) Bond. When not otherwise provided by law, the court may require magistrates who are appointed to dispose of real or personal property to give 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. The bond shall be made payable to the State of Florida and shall be for the benefit of all persons aggrieved by any act of the magistrate.

(f) Hearings. The magistrate shall assign a time and place for proceedings as soon as reasonably possible after the reference is made and give notice to each of the parties. If any party fails to appear, the magistrate may proceed ex parte or may

adjourn the proceeding to a future day, giving notice to the absent party of the adjournment. The magistrate shall proceed with reasonable diligence in every reference and with the least practicable delay. Any party may apply to the court for an order to the magistrate to speed the proceedings and to make the report and to certify to the court the reason for any delay. Unless otherwise ordered by the court, all hearings shall be held in the courthouse of the county where the action is pending. The evidence shall be taken in writing by the magistrate or by some other person under the magistrate's authority in the magistrate's presence and shall be filed with the magistrate's report. The magistrate shall have authority to examine the parties on oath upon all matters contained in the reference and to require production of all books, papers, writings, vouchers, and other documents applicable to it and to examine on oath orally all witnesses produced by the parties. The magistrate shall admit evidence by deposition or that is otherwise admissible in court. The magistrate may take all actions concerning evidence that can be taken by the court and in the same manner. All parties accounting before a magistrate shall bring in their accounts in the form of accounts payable and receivable, and any other parties who are not satisfied with the account may examine the accounting party orally or by interrogatories or deposition as the magistrate directs. All depositions and documents that have been taken or used previously in the action may be used before the magistrate.

(g) Magistrate's Report. In the reports made by the magistrate no part of any statement of facts, account, charge, deposition, examination, or answer used before the magistrate shall be recited. The matters shall be identified to inform the court what items were used.

(h) Filing Report; Notice; Exceptions. The magistrate shall file the report and serve copies on the parties. The parties may serve exceptions to the report within 10 days from the time it is served on them. If no exceptions are filed within that period, the court shall take appropriate action on the report. If exceptions are filed, they shall be heard on reasonable notice by either party.