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Rainy Day Dollars Used to Alleviate Foreclosure Backlogs

Chief judges use one-time allocations to move cases

By Jan Pudlow

Senior Editor

A one-time boost of \$6 million to trial courts and \$3.6 million to court clerks is buying desperately needed resources to dig courts out of Florida's foreclosure backlog crisis.

Beginning July 1, that total \$9.6 million in nonrecurring dollars from the Legislature has been put to work in each of Florida's 20 circuits.

Amounts range from \$862,053 for the 11th Circuit, grappling with the hugest 87,955 backlog in Miami-Dade County, to \$64,261 for the Third Circuit in rural North Florida, annoyed by a relatively paltry 1,325 foreclosure pile-up.

Chief judges made decisions tailored to their circuits to hire more case managers, general magistrates, and/or additional senior judge days to tackle the backlog crisis, while new cases continue to come.

As was mandated by the Florida Supreme Court, mediation must be attempted first, before setting the matter for a final hearing before a judge.

"We're very optimistic. Whether we can meet all the time lines remains to be seen. We will give it a shot and we just hope the shot is on target and not going off the deep end somewhere. We senior judges looking for retirement all need to be Baker Acted," joked Senior Judge A.C. Soud, put in charge of the challenging mission to move the foreclosure backlog with renewed efficiency in the Fourth Circuit.

The Fourth Circuit received \$212,729 to

<u>CIRCUIT</u>	<u>BACKLOG</u>	<u>FUNDING</u>
First	12,960	\$106,365
Second	4,385	\$106,365
Third	1,325	\$ 64,261
Fourth	21,523	\$212,729
Fifth	19,931	\$212,729
Sixth	39,394	\$317,752
Seventh	21,585	\$212,729
Eighth	2,575	\$106,365
Ninth	50,600	\$425,457
10th	12,979	\$106,365
11th	87,955	\$862,053
12th	25,557	\$212,729
13th	38,180	\$427,504
14th	4,634	\$106,365
15th	63,402	\$646,540
16th	2,671	\$106,365
17th	57,514	\$646,540
18th	31,052	\$319,094
19th	20,717	\$212,729
20th	41,005	\$425,458

whittle down a backlog of 21,523 cases. The goal is to clear 62 percent of the backlog, or 13,344 cases.



Most of those dollars have been spent on a full-time judicial assistant case manager and six senior judges working on foreclosures in Duval, Clay, and Nassau counties.

"It is true a good bit of resources is put into senior judge work, simply because nothing is going to be done without a judge's signature. We are trying to use our senior judges as efficiently as possible on a rotating basis," Judge Soud said.

"It may be that we judges have to be more aggressive. I have to do that with case management. There's just so much you can order lawyers and litigants to do. The court cannot become oppressive.

"We want to meet the Supreme Court's goal, but we want to make sure everyone's due process rights are done. We don't want to just look at the numbers. We are a court system, not a CPA firm."

Looking at the numbers is the job of Kristine Slayden, who works in research and data at the Office of the State Courts Administrator. Her chart estimates the property/mortgage foreclosure backlog from FY 2006-07 through FY 2010-11 to be 559,945 cases statewide.

Because the Legislature only allocated 62 percent of what was requested for the courts to target foreclosures, the adjusted goal is to whittle down 62 percent of the foreclosure backlog cases statewide: 347,165 cases by June 30, 2011.

"The Legislature said we'll never get out of the housing slump if houses are sitting out there vacant. This is going hand-in-hand with managed mediation that has a time frame goal of 120 days in resolving cases," Slayden said. "Hopefully, this is providing an opportunity for homeowners to have a voice in what is important: to stay in their homes."

On August 6, Slayden sent a memo to all chief judges and trial court administrators outlining OSCA's plan to provide monthly progress reports on how circuits are doing toward achieving the 62 percent backlog goal. OSCA's first report was August 30, after this *News* went to press.

Chief judges say it's too early to tell what effect the extra resources are having in hard numbers, and a clearer picture will emerge in another 90 days. But they are hopeful the infusion of extra positions will move the backlog clogging the civil courts faster than new cases coming in.

Asked how he spent \$425,457 given to the Ninth Circuit, Chief Judge Belvin Perry replied: "We took our money and went to Disney World!"

After a big laugh, Perry outlined his strategy for dealing with a 50,600 foreclosure backlog. After a daylong training session, one senior judge and two staff members were dispatched to Osceola County, and in Orange County, two senior judges alternate working five days a week with the help of four staff. The additional resources were not sufficient, Judge Perry said, so existing staff has had to take on additional work.

An added challenge in Orange County is the only spare courtroom is in the family law area, and the courtroom and hallways, Judge Perry said, "are just deluged with foreclosures."

Perry shared the first numbers he has gathered:

From July 6 to August 1, in Orange County, approximately 600 cases were closed by the two senior

judges.

For the same time period in Osceola County, 719 cases were closed.

"The numbers, I think, will go up, and we are hopeful that they will continue to go up as the process begins," Perry said. "It's very tedious and very intense."

But, Perry warned, "People in the banking community seem to think there will be an increase in filings.

"It's just too early to tell if we will wipe out the backlog. You may find smaller rural areas wipe out backlogs," Perry said.

"But the metropolitan areas that have been hard hit, I don't see them wiping it out. It's trading one basket of widgets for another basket of widgets."

One hard-hit area is Palm Beach County, where the foreclosure backlog is 63,402, and 15th Circuit Chief Judge Peter Blanc received \$646,540.

"We are bringing in senior judges and we've hired case managers to be of assistance to senior judges to plow through the cases," Chief Judge Blanc said.

Even before the new money arrived, Blanc said, "I tried to be very stingy with senior judges" on call for sick judges and emergencies.

Because of that, he was able to start chipping away at the foreclosure backlog in April, in more than 5,000 cases where motions for summary judgments had been filed but the cases had not yet had hearings.

Now that the foreclosure dollars arrived in July, Blanc received an additional \$250,604 for "senior judge days" and \$272,103 for case managers, who go through files and make sure pleadings are ready to be set for hearings.

"We are able to have two senior judges most days based on foreclosures. It's a great resource we didn't have before. We weren't even treading water. The numbers are overwhelming, and it's a blessing to have the extra resources," Chief Judge Blanc said.

"We're in new territory. There are so many variables. We want to make sure we don't rush the cases through the system. We want to properly adjudicate," Blanc said.

"I've read about some claims of fraud on the part of lenders. And, of course, it only becomes an issue if it's pled in the case. I like to hope if there's any fraud, that it wouldn't be widespread. . . . I mention that because it's a variable, and I don't know if it will be a factor."

Another delaying factor is that lenders are asking to postpone sales dates on foreclosed properties.

"What we've been hearing is that the banks are causing a lot of the slowdown. Now that the resources are out there, we have tons of ability to schedule hearings, but the banks aren't taking advantage of it," Slayden said.

"We want to make sure if we don't hit our 62 percent, we can say why, and it may not be in our control."

It's the opinion of Fourth Circuit Chief Judge Donald Moran that a business strategy for banks and

lenders is to keep extending the sales dates on foreclosed properties, because it helps their bottom lines if they are carrying assets on the books, rather than mounting liabilities of maintaining foreclosed properties, paying property taxes, insurance, and sometimes condo fees.

"We haven't implemented it yet, but we are not going to extend the sales date without the debtor and creditor both agreeing," Chief Judge Moran said.

"Right now, the homeowner doesn't agree; the banks are doing it on their own. There will need to be a good cause to extend the sales date. Either they are in negotiation or there is a short sale in progress. We are trying to tighten it up. It will result in more closed cases."

His senior judge in charge of foreclosures, Judge Soud, said the volume of paperwork is enormous, and the main motion they see is to reschedule foreclosure sales.

"When a judge has signed a summary judgment, he was setting the sale at 30 or 40 or 45 days away. By the time it gets in the mail and notices are published in the local paper, a lot of law firms were not getting things in order to go through with the foreclosure sale," Judge Soud said.

"We were getting many motions to cancel foreclosures sales or a motion to reschedule. What we have started doing is instead of 30 to 35 days or 40 or 45 days, we are scheduling up to 60 days as a way to see if the additional time will work. Whether it's good or bad, I can't tell you. We have extended the sales date 15 days."

Judge Soud said he will scrutinize requests to reschedule foreclosure sales to see which law firms ask for extensions most often.

Managed mediation through the Jacksonville Bar Association, he said, is working well. And rather than tying up the one full-time judicial assistant case manager on the phone all day, Judge Soud said, "One thing we learned is we set all hearings by e-mail attachments. This has turned out to be great.

"We have a great clerk of court. There are no turf wars and territory-protecting. As a result, we have a full-time assistant clerk assigned to us."

That clerk goes through the files to see if there are any homesteads that should have been mediated, and if so, if the reports from the homeowners are in order.

As 12th Circuit Chief Judge Lee Haworth, in Sarasota County, recently told The Florida Bar Board of Governors: "We got a one-year gift from the Legislature of \$212,729 to reduce mortgage foreclosures. We hired four case managers and got extra senior judges. We're going to be moving quickly to reduce that backlog. We owe it to the people in those cases to move those cases quickly."

And there's an incentive bonus for circuits that successfully clear the backlog early. The chief judge may request in writing to use these "foreclosure and economic recovery" funds to handle contracts and indebtedness cases, and county civil cases valued from \$5,001 to \$15,000.

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