

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR SARASOTA COUNTY**

Plaintiff,

vs.

Case No. _____

Defendant(s)

**FINAL ORDER DISMISSING FORECLOSURE COMPLAINT FOR PERSISTENT
FAILURE TO COMPLY WITH TWELFTH CIRCUIT ADMINISTRATIVE ORDER**

THIS CAUSE came before the court at a hearing noticed by plaintiff and/or upon review of the case file and prior cases filed by plaintiff's law firm.

The court sua sponte **FINDS** plaintiff or its counsel is a high volume filer of foreclosure complaints in this circuit. After repeated warnings plaintiff's counsel has engaged in a persistent pattern of ignoring and failing to comply with Twelfth Circuit Administrative Order 2010-12.1, incorporated by reference, has ignored rules of civil procedure, and in particular the court further **FINDS**:

- Without providing notice to the court or other parties, the plaintiff failed to appear at the hearing it scheduled;
- Plaintiff scheduled the hearing but failed to file a Notice of Hearing;
- Plaintiff failed to file the mandated Mortgage Foreclosure Summary Judgment Checklist;
- Plaintiff failed to file the original promissory note without legal excuse;
- Plaintiff failed to e-file foreclosure documents and has provided paper pleadings and material directly to the judges' chambers;
- Plaintiff cancelled hearing but failed to serve notice of cancellation on opposing party who attended in person;
- Plaintiff obtained a summary judgment hearing date on the circuit's Judicial Automated Calendaring System (JACS) but failed to file the motion and supporting documents immediately after the hearing was scheduled.
- Plaintiff has previously filed a voluntary dismissal of the case;
- A Final Judgment has previously been entered in this case;

OTHER: _____

NOW, THEREFORE, it is ORDERED:

- A. Plaintiff's complaint for foreclosure in dismissed without prejudice. If the action is re-filed against the same property, a new filing fee and case number will be required. The clerk is directed to close the case.**
- B. Exhibit A attached and incorporated into this order is a summary of pertinent portions of the relevant administrative order routinely violated by plaintiff's counsel, and includes a summary of the efforts made in this circuit to effect plaintiff's counsel's voluntary compliance with administrative orders. In addition, this court has given frequent verbal warnings to plaintiff's counsel that sanctions would be imposed if compliance was not forthcoming. At this time the court has no option but to order the drastic remedy of dismissal.**

DONE AND ORDERED in Chambers in Sarasota County, Florida, on this _____ day of _____ 2010.

**Circuit Judge
Twelfth Judicial Circuit**

**cc: Plaintiff attorney of record
Defendant(s)**

Exhibit A

Twelfth Circuit Administrative Order 2010-12.1, incorporated herein by reference, was adopted by the court May 20, 2010, effective June 21, 2010. Its procedural requirements are substantially identical to those set forth in a prior administrative order, 2008-14.1, effective December of 2008. All Administrative Orders are published on the circuit website and the circuit liaisons notified by email of those orders affecting foreclosure procedures.¹

Among other requirements, Administrative Order 2010-12.1 mandates:

1. Immediate filing of the motion for summary judgment and all supporting documents upon the reservation of hearing time on JACS (AO 2010-12.1, Section I, pp. 2-3);
2. Electronic filing of all foreclosure pleadings and related documents (AO 2010-12.1, Section II, pp. 7-8);
3. That plaintiff attorneys appear in person at summary judgment hearings (AO 2010-12.1, p. 8; see also, AO 2009-2.1, Emergency Order Suspending Telephone Hearings In Foreclosure Cases In Sarasota And Manatee Counties);
4. Summary judgment pleadings and related documents are to be sent to the clerk, with the required checklist. Such material is not to be sent to the judges' chambers. (AO 2010-12.1, p. 3-4);
5. Notice of cancellation of summary judgment hearings are to be provided promptly to persons required to receive notice and by the most expeditious means. (AO 2010-12.1, p. 5);
6. The original promissory note is to be filed with the clerk, AO 2010-12.1, p. 8.

Several notices were provided to plaintiff's circuit liaisons by email in an effort to educate and to obtain voluntary compliance with the AO:

Email Notice to Foreclosure Liaisons (5/20/10)

The Chief Judge of the Florida Twelfth Circuit Court has just entered two comprehensive Administrative Orders (AO) that affect procedures in mortgage foreclosure actions filed in the Circuit. Copies of AO 2010-11.1 (Case Management & Mandatory Mediation) and AO 2010-12.1 (Standard Procedures for Attorneys Prosecuting & Defending Residential & Commercial Mortgage Foreclosure Actions) are attached. Please review these orders and distribute them to personnel in your firm who practice in the are of mortgage foreclosures.

Edward Wilson, Court Counsel
Twelfth Judicial Circuit

¹ Since December of 2008, to facilitate communication with the court, law firms filing more than 5 foreclosure actions in a calendar year have been required to provide the court with contact information for a circuit liaison (AO 2008-14.1 and AO 2008-15.1). This provision was continued in AO 2010-12.1 (pp. 6-7).

Email Notice to Foreclosure Liaisons (6/9/10)

On June 3, 2010, the Supreme Court of Florida in *In re Amendments to the Florida Rules of Civil Procedure*, Case No. SC09-1460, issued a revised opinion and denied the pending motions for rehearing or clarification. Therefore, you are notified that commencing on **June 19, 2010**, the Twelfth Judicial Circuit will re-commence spot-checking new residential mortgage foreclosure complaints to ascertain whether they are properly verified in accordance with Rule 1.110(b), Fla. R. Civ. P. Foreclosure actions commenced via non-compliant complaints are subject to *sua sponte* dismissal by the Court and a new filing fee will be required if the plaintiff desires to proceed with the foreclosure action.

Please also circulate to personnel in your firm the two Administrative Orders (AO 2010-11.1 & AO 2010-12.1) recently rendered by the Chief Judge of the Twelfth Judicial Circuit. Copies of the orders are attached. These orders directly affect procedures for the processing of foreclosure cases in the circuit. Please note that the Residential Mortgage Foreclosure Mediation Program (AO 2010-11.1) supplants the Homestead Foreclosure Conciliation Program of the now-vacated AO 2008-14.1. Please also note the specific requirements of Section I.(F) of AO 2010-12.1 relative to *plaintiff's* appointment of foreclosure liaisons.

Edward Wilson, Court Counsel
Twelfth Judicial Circuit

Email Notice to Foreclosure Liaisons (6/11/10)

Chief Judge Haworth has asked me to send a special invitation inviting senior members of your foreclosure legal staff to the seminar scheduled for 1:30 p.m., on June 28, 2010, at the County Commission meeting room, 1660 Ringling Blvd, Sarasota. At the end of the seminar he will be conducting a closed door session or caucus restricted to plaintiffs' firm representatives and their local counsel.² He would like to discuss suggestions and procedures for expediting the closure of cases and to have a candid discussion about problems you and the courts are having with the existing process. This will be an opportunity to propose plaintiffs' ideas for increasing efficiency commensurate with due process limitations, and to see if common ground can be reached on issues important both to the court and to servicers. A reservation form for the seminar is attached.

Edward Wilson, Court Counsel, Twelfth Judicial Circuit

Email Notice to Foreclosure Liaisons (8/2/10)

Attention Foreclosure Attorneys and Liaisons!

² At this seminar, Chief Judge Haworth met with attorneys and representatives of the plaintiff law firms to discuss the managed mediation program, and to review the foreclosure procedures mandated by the new circuit administrative orders.

All residential foreclosure actions filed after June 21, 2010 must be in compliance with Administrative Order 2010-11.1, pertaining to the case management and referral of homestead cases to mediation. The parties must comply with this Administrative Order and the mediation process must be completed before the plaintiff applies for default judgment, a summary judgment hearing, or a final hearing in an action to foreclose a mortgage on a homestead residence. If a notice for trial, motion for default final judgment, or motion for summary judgment is filed with the clerk of court, no action will be taken by the court to set a final hearing or enter a summary or default final judgment until the requirements of this Administrative Order have been met. The failure of a party to fully comply with the provisions of this Administrative Order may result in the imposition of any sanctions available to the court, including dismissal of the cause of action without further notice.

AO 2008-14.1 and AO 2008-15.1 have been **vacated** by Administrative Order 2010-12.1, which establishes standard procedures for attorneys defending and prosecuting residential and commercial foreclosure proceedings. Failure to comply with the provisions of this Administrative Order may result in the cancellation of hearings, termination of the privilege of telephone hearings, or other sanctions. Chronic offenders may be denied access to JACS and required to request hearing time by email, which may result in substantial delays in the processing of cases. Be advised that the 12th Judicial Circuit's conciliation program which commenced December of 2008 was terminated on June 21, 2010. Compliance with the prior Administrative Order is not required to process cases filed before that date.

Visit the 12th Judicial Circuit's website at www.jud12.flcourts.org, or at the link below for more information about the administrative orders' requirements and to download forms.

<http://www.jud12.flcourts.org/Programs&Services/ForeclosureInformation.aspx>

Edward Wilson, Court Counsel, Twelfth Judicial Circuit

Email Notice to Foreclosure Liaisons (8/23/10)

Attached are two documents [*] that summarize the current requirements for the foreclosure of mortgages in the Twelfth Judicial Circuit. Since they address many of the most frequently asked questions, please distribute them to your personnel who work on foreclosure cases. Current information regarding foreclosure procedures may be obtained at the Court's webpage at:

<http://12circuit.state.fl.us/Programs&Services/ForeclosureInformation.aspx>

The Court encourages you to visit the webpage often for important updates.

Also, despite the requirement now in effect for **mandatory** mediation of foreclosure actions involving homestead property (*See* AO 2010-11.1), some plaintiffs are not submitting the required Form A when a new action is filed. **Completion of Form A by plaintiff's counsel as required by AO 2010-11.1 is the critical first step in the managed mediation process. Upon being advised by the Program Manager of repeated non-compliance, the assigned judge or**

the chief judge may impose sanctions, including the *sua sponte* dismissal of the pending action, requiring re-filing of the complaint with a new filing fee and mediation fee.

Edward Wilson, Court Counsel, Twelfth Judicial Circuit

[*] This summary of AO 2010-12.1 was attached as an exhibit to the above email:

“Standard Procedures for Attorneys Prosecuting and Defending Residential and Commercial Mortgage Foreclosure Actions in the Twelfth Judicial Circuit

The following information is a *summary* of the requirements of Administrative Order No: 2010-12.1 establishing standard procedures for attorneys prosecuting and defending residential and commercial mortgage foreclosure actions. AO 2010-12.1 vacates AO 2008-14.1 and AO 2008-15.1. Visit the Twelfth Judicial Circuit’s website at www.jud12.flcourts.org to access this administrative order, as well as other administrative orders and judicial requirements pertaining to foreclosure actions. Forms referenced (highlighted in red) within this summary can be found on the circuit’s website.

The 12th Circuit’s conciliation program which commenced December of 2008 was terminated on June 21, 2010. Compliance with the prior Administrative Order is not required to process cases filed before that date.

❖ **What is the purpose of this Administrative Order?**

Standardized procedures are required to facilitate efficient processing of foreclosure cases, as well as to verify that cases are ready for final disposition. There has been persistent difficulty in communicating with parties and/or their attorneys filing foreclosure actions regarding logistical and efficiency issues, so standard procedures are necessary to assist the court and clerk in the processing of an extremely large numbers of cases.

❖ **To what types of property do these procedures apply?**

- A. This Order applies to all residential and commercial mortgages on real property located within the boundaries of the Twelfth Judicial Circuit.
- B. This Order does not apply to independent actions to foreclose other interests in real property such as homeowner association liens, condominium or cooperative association liens, mechanic liens, tax or equitable liens.
- C. The requirement of E-filing defensive motions and pleadings is applicable to all foreclosure actions, as well as independent actions, unless the litigants are pro se. (DeSoto County does not have E-filing capability at this time.)

❖ **What procedures are applicable regardless of the date the complaint was filed?**

The following procedures are applicable to all parties **represented by counsel** filing or defending residential or commercial mortgage foreclosure actions in Manatee, Sarasota, and DeSoto Counties:

- A. It is mandatory to use the standard foreclosure Final Judgment.

B. It is mandatory to use JACS to schedule hearings, and attorneys are required to have an email address as part of the JACS registration process.

C. **Do not** obtain hearing time for motions for summary judgment unless the motion and complete supporting documentation is prepared and ready to file with the clerk.

D. If seeking summary judgment, all documentation supporting the motion, including the proposed Final Judgment, note, mortgage, Mortgage Foreclosure Summary Judgment Checklist, Certificate of Compliance with the Residential Mortgage Foreclosure Mediation Program, and copy of the most recently filed Form A, must be transmitted to the clerks, not to the judges' chambers. (Original documents i.e.: note and mortgage must be delivered to the clerk in original form, and E-file copies.)

E. Use JACS to cancel summary judgment or any motion hearings if JACS permits. If not, the party who noticed the hearing may cancel it by phone or email by contacting foreclosure case managers.

F. In the event a foreclosure sale must be cancelled on short notice, E-file the original motion and proposed order with the clerk and **fax** a copy to the judge's chambers. Use Supreme Court Form 1.996(b) to cancel and reschedule foreclosure sales.

❖ **What additional procedures became applicable on or after June 21, 2010?**

Before a summary judgment hearing is scheduled to foreclose a lien on homestead property, the requirements of Administrative Order 2010-12.1 must be met. See the Administrative Order and its summary for complete information.

A. There is an automatic referral to mediation for cases filed on or after **June 21, 2010**, if the case meets the following criteria:

The note and mortgage is subject to provisions of federal Truth in Lending Act, Regulation Z;

The case is a homestead residence;

Both the lender & borrower did not agree in writing to opt out of the program; and

The parties did not participate in a qualified pre-suit mediation.

B. Plaintiff's counsel must include with the summons the Notice to Homeowners Facing Foreclosure.

C. Plaintiff's counsel must file a copy of the most recently filed Form A and the Attorney's Certificate of Compliance at the same time the motion for summary judgment is filed and prior to obtaining hearing time.

D. The parties must comply with Administrative Order 2010-11.1, and the mediation process must be completed before the plaintiff applies for default judgment, a summary judgment hearing, or a final hearing in an action to foreclose a homestead residence unless a Notice of Borrower's Nonparticipation is filed by the Program Manager.

❖ **E-Filing Requirements**

The requirement for E-filing is mandatory for attorneys representing clients seeking to foreclose or defend commercial or residential mortgages. Parties with attorneys are required to use the E-filing system when filing foreclosure pleadings, motions and litigation-related documents in Manatee and Sarasota Counties. **See Administrative Order 2010-12.1 for detailed E-filing rules**

and for information about requests for exemption. Litigants and their counsel should consult each clerk's website for detailed instructions at www.sarasotaclerk.com or www.manateeclerk.com.

Rules in Brief:

1. Deliver original documents (i.e.: promissory notes and mortgages) to the clerk, but E-file copies.
2. Plaintiff attorneys must personally appear in court for summary judgments.
3. Plaintiff Attorneys must enter the sale date into the judgment copies.
4. Plaintiff Attorneys must provide copies of Final Summary Judgment to the parties.
5. Plaintiff Attorneys must provide pre-addressed and stamped envelopes to the clerk for foreclosure documents and Certificates of Sale and Title.
6. Plaintiff Attorneys must complete and submit Notices of Sale to the newspaper and file the notice with the clerk, with affidavits, no later than the day preceding the sale.
7. Proposed or stipulated orders shall be E-filed, in addition to hard copies (along with self-addressed, stamped envelopes) being sent to the assigned judge for consideration.

Be Advised: Important AO highlights:

- ❖ Mortgage foreclosure complaints involving residential property ***must be verified***.
- ❖ Plaintiff submissions will be spot checked to verify that the required documents have been filed and that all certifications required by both AO 2010-11.1 and AO 2010-12.1 have been complied with.
- ❖ **Hearings may be cancelled if the forms required by these administrative orders do not accompany the summary judgment motion, are not used, or are not timely filed.**
- ❖ **Other sanctions may also be imposed for non-compliance with the requirements of these Administrative Orders. Chronic offenders may be denied access to JACS!**
- ❖ Because these policies differ from judge to judge, the judge's requirements posted on the 12th Circuit website should be consulted by counsel and regularly reviewed for updates and modifications.
- ❖ Parties seeking to foreclose by summary judgment must establish through admissible evidence that they hold the note and mortgage that is the subject of the action. Documentation submitted with the motion must support the assertion of ownership. Mere allegations of ownership do not suffice. There must be a clear chain of note ownership linking the originator of the loan to the party claiming ownership.
- ❖ Blocks of time have been set aside specifically for foreclosure hearings, both contested and uncontested. Please see the requirements for setting hearing on the "Foreclosure-Contested" calendar and the "Foreclosure-Uncontested" calendar on the 12th Circuit website.
- ❖ Be sure that there are **two** Circuit Foreclosure Liaisons appointed for any plaintiff who has filed (5) or more foreclosure actions in the 12th Circuit who are informed of the requirements of this and all other administrative orders pertaining to foreclosures, and ensure that they are accessible to the court to address the issues affecting the progress of the plaintiff's cases.

Edward Wilson, Court Counsel, Twelfth Judicial Circuit