

**IN THE COURTS OF THE FIRST JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA**

**ADMINISTRATIVE ORDER NO. 2010-01
(Amends & Replaces Administrative Order No. 2009-18)**

**IN RE: FORECLOSURE
 MEDIATION**

**ORDER FOR CASE MANAGEMENT OF RESIDENTIAL FORECLOSURE CASES
AND MANDATORY REFERRAL OF MORTGAGE FORECLOSURE CASES
INVOLVING HOMESTEAD RESIDENCES TO MEDIATION**

WHEREAS, pursuant to Article V, Section 2(d) of the Florida Constitution and Section 43.26, *Florida Statutes*, the chief judge of each judicial circuit is charged with the authority and power to do everything necessary to promote the prompt and efficient administration of justice, and Rule 2.215(b)(3), *Florida Rules of Judicial Administration*, mandates the chief judge to “develop an administrative plan for the efficient and proper administration of all courts within the circuit;” and

WHEREAS, Rule 2.545 of the *Rules of Judicial Administration* requires that the trial courts “...take charge of all cases at an early stage in the litigation and ... control the progress of the case thereafter until the case is determined...”, which includes “... identifying cases subject to alternative dispute resolution processes;” and

WHEREAS, Chapter 44, *Florida Statutes*, and Rules 1.700-1.750, *Florida Rules of Civil Procedure*, provide a framework for court-ordered mediation of civil actions, except those matters expressly excluded by Rule 1.710(b), which does not exclude residential mortgage foreclosure actions; and

WHEREAS, residential mortgage foreclosure case filings have increased substantially in the First Judicial Circuit, and state and county budget constraints have limited the ability of the courts in the First Judicial Circuit to manage these cases in a timely manner; and

WHEREAS, high residential mortgage foreclosure rates are damaging the economies of the counties in the First Judicial Circuit; and

WHEREAS, the Supreme Court of Florida has determined that mandatory mediation of homestead residential mortgage foreclosure actions prior to the matter being set for final hearing will facilitate the laudable goals of communication, facilitation, problem-solving between the parties with the emphasis on self-determination, the parties’ needs and interests, procedural flexibility, full disclosure, fairness, and confidentiality. Referring these cases to mediation will also facilitate and provide a more efficient use of limited judicial and clerk resources in a court system that is already

overburdened; and

WHEREAS, the Collins Center for Public Policy, Inc. is an independent, nonpartisan, nonprofit organization that has demonstrable ability to assist the courts with managing the large number of residential mortgage foreclosure actions that recently have been filed in the First Judicial Circuit.

NOW, THEREFORE, IT IS ORDERED:

Definitions

As used in this Administrative Order, the following terms mean:

“RMFM Program” (Residential Mortgage Foreclosure Mediation Program) means the mediation program managed by the Collins Center for Public Policy, Inc. to implement and carry out the intent of this Administrative Order.

“The Program Manager” means the Collins Center for Public Policy, Inc., qualified in accordance with parameters attached as Exhibit 14. Also referred to as the “Mediation Manager.”

“Plaintiff” means the individual or entity filing to obtain a mortgage foreclosure on residential property.

“Plaintiff’s representative” means the person who will appear at mediations who has full authority to settle without further consultation and resolve the foreclosure suit.

“Borrower” means an individual named as a party in the foreclosure action who is a primary obligor on the promissory note which is secured by the mortgage being foreclosed.

“Homestead residence” means a residential property for which a homestead real estate tax exemption was granted according to the certified rolls of the last assessment by the county property appraiser prior to the filing of the suit to foreclose the mortgage.

“Form A” means the certifications required herein in the format of Exhibit 1 attached.

“Plaintiff’s Disclosure for Mediation” means those documents requested by the borrower pursuant to Paragraph 7 below.

“Borrower’s Financial Disclosure for Mediation” means those documents described in Exhibit 5 attached.

“Foreclosure counselor” means a counselor trained in advising persons of options available when facing a mortgage foreclosure, who has no criminal history of committing a felony or a crime of dishonesty, and who is certified by the United States Department of Housing and Urban Development (HUD) or National Foreclosure Mitigation Counseling Program (NFMC) as an agency

experienced in mortgage delinquency and default resolution counseling.

“Communication equipment” means a conference telephone or other electronic device that permits all those appearing or participating to hear and speak to each other, provided that all conversation of the participants is audible to all persons present.

Scope

1. **Residential Mortgage Foreclosures (Origination Subject to TILA).** This Administrative Order shall apply to all residential mortgage foreclosure actions filed in the First Judicial Circuit in which the origination of the note and mortgage sued upon was subject to the provisions of the federal Truth in Lending Act, Regulation Z.¹ However, compliance with this Administrative Order varies depending on whether the property secured by the mortgage is a homestead residence.

Upon the effective date of this Administrative Order, all newly filed mortgage foreclosure actions filed against a homestead residence shall be referred to the RMFM Program unless the plaintiff and borrower agree in writing otherwise or unless pre-suit mediation was conducted in accordance to Paragraph 23. The parties to the foreclosure action shall comply with the conditions and requirements imposed by this Administrative Order. In actions to foreclose a mortgage on a homestead residence, the plaintiff and borrower shall attend at least one mediation session, unless the plaintiff and borrower agree in writing not to participate in the RMFM Program or the Program Manager files a notice of borrower nonparticipation.

Upon the effective date of this Administrative Order, all newly filed residential mortgage foreclosure actions involving property that is not a homestead residence shall comply with the requirements of filing a Form A as required by Paragraph 5 below and the requirements of Paragraph 18 below (plaintiff’s certification as to settlement authority).

At the discretion of the presiding judge, compliance with this Administrative Order may also be required for homestead residential mortgage foreclosure actions filed prior to the effective date of this Administrative Order, to residences which are not homestead residences, and any other residential foreclosure action the presiding judge deems appropriate. A party requesting that the case be sent to mediation with the RMFM Program at the discretion of the presiding judge shall make the request in format of Exhibit 3 attached.

2. **Referral to Mediation.** This Administrative Order constitutes a formal referral to mediation pursuant to the *Florida Rules of Civil Procedure* in actions involving a mortgage foreclosure of a homestead residence. The plaintiff and borrower are deemed to have stipulated to mediation by a mediator assigned by the Program Manager unless pursuant to Rule 1.720(f), *Florida Rules of Civil Procedure*, the plaintiff and borrower filed a written stipulation choosing not to

¹ Condominium association and homeowner’s association fee foreclosures and mechanics lien and construction lien foreclosures are not included in the RMFM Program.

participate in the RMFM Program. Referral to the RMFM Program is for administration and management of the mediation process and assignment of a Florida Supreme Court certified circuit civil mediator who has been trained in mediating residential mortgage foreclosure actions and who has agreed to be on the panel of available certified circuit civil mediators. Mediators used in the RMFM Program shall be trained in accordance with the standards stated in Exhibit 13 attached. Mediation through the RMFM Program shall be conducted in accordance with *Florida Rules of Civil Procedure* and *Florida Rules for Certified and Court-Appointed Mediators*.

Processing of residential mortgage foreclosure cases referred to mediation pursuant to Administrative Order 2009-18 shall not be delayed while the specific mediation training requirements of this Administrative Order are satisfied during the 90 days following the effective date of this order.

3. **Compliance Prior to Judgment.** 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 unless a notice of nonparticipation is filed by the Program Manager.

4. **Delivery of Notice of RMFM Program with Summons.** After the effective date of this Administrative Order, in all actions to foreclose a mortgage on residential property the clerk of court shall attach to the summons to be served on each defendant a notice regarding managed mediation for homestead residence in the format of Exhibit 2 attached.

Procedure

5. **Responsibilities of Plaintiff's Counsel; Form A.** When suit is filed, counsel for the plaintiff must file a completed Form A with the clerk of court. If the property is a homestead residence, all certifications in Form A must be filled out completely. Within one business day after Form A is filed with the clerk of court, counsel for plaintiff shall also transmit in the electronic format approved by the Chief Judge a copy of Form A to the Program Manager along with the case number of the action and contact information for all of the parties. The contact information must include at a minimum the last known mailing address and phone number for each party. The Program Manager shall notify plaintiff's counsel of any incomplete or seemingly inaccurate information and plaintiff's counsel shall provide correct information promptly. The Program Manager website address is <http://www.collinscenter.org>. The website address can also be obtained at <http://www.FirstJudicialCircuit.org>.

In Form A, plaintiff's counsel must affirmatively certify whether the origination of the note and mortgage sued upon was subject to the provisions of the federal Truth in Lending Act, Regulation Z. In Form A, plaintiff's counsel must also affirmatively certify whether the property is a homestead residence. Plaintiff's counsel is not permitted to respond to the certification with "unknown," "unsure," "not applicable," or similar nonresponsive statements.

If the property is a homestead residence and if the case is not exempted from participation in the RMFM Program because of pre-suit mediation conducted in accordance with Paragraph 23

below, plaintiff's counsel shall further certify in Form A the identity of the plaintiff's representative who will appear at mediation. Plaintiff's counsel may designate more than one plaintiff's representative. At least one of the plaintiff's representatives designated in Form A must attend any mediation session scheduled pursuant to this Administrative Order. Form A may be amended to change the designated plaintiff's representative, and the amended Form A must be filed with the court no later than five days prior to the mediation session. All amended Forms A must be electronically transmitted to the Program Manager via a secure dedicated e-mail address or on the web-enabled information platform described in Paragraph 8 no later than one business day after being filed with the clerk of court.

6. Responsibilities of Borrower. Upon the Program Manager receiving a copy of Form A, the Program Manager shall begin efforts to contact the borrower to explain the RMFM Program to the borrower and the requirements that the borrower must comply with to obtain a mediation. The Program Manager shall also ascertain whether the borrower wants to participate in the RMFM Program.

The borrower must do the following prior to mediation being scheduled: meet with an approved mortgage foreclosure counselor, and provide to the Program Manager the information required by the Borrower's Financial Disclosure for Mediation. The borrower must meet in person or by telephone with an approved mortgage foreclosure counselor no later than 30 days after the borrower is initially in contact with the Program Manager. The borrower's legal counsel may also attend foreclosure counseling, but attendance by legal counsel without the borrower does not satisfy the requirement. If the borrower fails to timely schedule a meeting with a foreclosure counselor, such failure shall be grounds for the Program Manager to file a notice of nonparticipation as provided in Paragraph 9 below. Completion of the Borrower's Financial Disclosure for Loan Modification references in Exhibit 5A is mandatory in every case so that the borrower's basic financial condition can be assessed by the plaintiff. As applicable, the borrower's financial disclosure for alternative workout options, short sale and a deed in lieu of foreclosure referenced in Exhibit 5B and 5C, should be submitted or made available to plaintiff's counsel and plaintiff's representative designated in Form A.

It shall be the responsibility of the Program Manager to transmit the Borrower's Financial Disclosures for Mediation to plaintiff's counsel and the plaintiff's representative designated in Form A via a secure dedicated e-mail address or to upload same to the web-enabled information platform described in Paragraph 8. If the information is uploaded the Program Manager shall notify plaintiff's counsel and the plaintiff's representative that the Borrower's Financial Disclosure for Mediation is available. The Program Manager is not responsible or liable for the accuracy of the borrower's financial information. The transmission of the Borrower's Financial Disclosure for Mediation to plaintiff's counsel and the plaintiff's representative shall occur no later than 60 days after the Program Manager received the electronic transmission of Form A from plaintiff's counsel.

7. Plaintiff's Disclosure for Mediation. Within the time limit stated below, prior to attending mediation the borrower may request any of the following information and documents from the plaintiff:

- Documentary evidence the plaintiff is the owner and holder in due course of the note and mortgage sued upon.
- A history showing the application of all payments by the borrower during the life of the loan.
- A statement of the plaintiff's position on the present net value of the mortgage loan.
- The most current appraisal of the property available to the plaintiff.

The borrower must deliver a written request for such information to the Program Manager in the format of Exhibit 6 attached no later than 25 days prior to the mediation session. The Program Manager shall promptly electronically transmit the request for information to plaintiff's counsel.

Plaintiff's counsel is responsible for ensuring that the Plaintiff's Disclosure for Mediation is electronically transmitted via a secure dedicated e-mail address or to the web-enabled information platform described in Paragraph 8 below no later than three (3) business days before the mediation session. The Program Manager shall promptly deliver a copy of Plaintiff's Disclosure for Mediation to the borrower.

8. Information to be Provided via Secure Dedicated E-mail Address or Web-enabled Information Platform. All information to be provided to the Program Manager to advance the mediation process, such as Form A, Borrower's Financial Disclosure for Mediation, Plaintiff's Disclosure for Mediation, as well as the case number of the action and contact information for the parties, shall be submitted electronically in a format approved by the Chief Judge via a secure dedicated e-mail address or in a web-enabled information platform with XML data elements.

9. Nonparticipation by Borrower. The Program Manager shall have 30 days after electronically receiving contact information for the borrower (as required by Paragraph 5 above) to contact the borrower. If the borrower does not want to participate in the RMFM Program, or if the borrower fails or refuses to cooperate with the Program Manager, or if the Program Manager is unable to contact the borrower, the Program Manager shall file a notice of nonparticipation in the format of Exhibit 4 attached. The notice of nonparticipation shall be filed no later than 10 days after the borrower advises that he or she does not want to participate in the program, or fails to cooperate with requirements of this Administrative Order. If the Program Manager is unable to contact the borrower within 30 days after electronically receiving contact information for the borrower, the notice of nonparticipation shall be filed within 40 days after the borrower contact information is electronically received by the Program Manager. A copy of the notice of nonparticipation shall be served on the parties by the Program Manager.

10. Referral to Foreclosure Counseling. The Program Manager shall be responsible for referring the borrower to a foreclosure counselor prior to scheduling mediation. Selection from a list of foreclosure counselors certified by the United States Department of Housing and Urban Development shall be by rotation or by such other procedures as may be adopted by administrative

order of the chief judge in the circuit in which the action is pending. The borrower's failure to participate in foreclosure counseling shall be cause for terminating the case from the RMFM Program.

11. **Referrals for Legal Representation.** In actions referred to the RMFM Program, the Program Manager shall advise any borrower who is not represented by an attorney that the borrower has a right to consult with an attorney at any time during the mediation process and the right to bring an attorney to the mediation session. The Program Manager shall also advise the borrower that the borrower may apply for a volunteer *pro bono* attorney in programs run by lawyer referral, legal services, and legal aid programs as may exist within the circuit. If the borrower applies to one of those agencies and is coupled with a legal services attorney or a volunteer *pro bono* attorney, the attorney shall file a notice of appearance with the clerk of the court and provide a copy to the attorney for the plaintiff and Program Manager. The appearance may be limited to representation only to assist the borrower with mediation but, if a borrower secures the services of an attorney, counsel of record must attend the mediation.

12. **Scheduling Mediation.** The plaintiff's representative, plaintiff's counsel, and the borrower are all required to comply with the time limitations imposed by this Administrative Order and attend a mediation session as scheduled by the Program Manager. No earlier than 60 days and no later than 90 days after suit is filed, the Program Manager shall schedule a mediation session. The mediation session shall be scheduled for a date and time convenient to the plaintiff's representative, the borrower, and counsel for the plaintiff and the borrower, using a mediator from the panel of Florida Supreme Court certified circuit civil mediators who have been specially trained to mediate residential mortgage foreclosure disputes. Mediation sessions will be held at a suitable location(s) within the circuit obtained by the Program Manager for mediation. Mediation shall be completed within the time requirements established by Rule 1.710(a), *Florida Rules of Civil Procedure*.

Mediation shall not be scheduled until the borrower has had an opportunity to meet with an approved foreclosure counselor and the Borrower's Financial Disclosure for Mediation has been transmitted to the plaintiff via a secure dedicated e-mail address or uploaded to the web-enabled information platform described in Paragraph 8. Mediation shall not be scheduled earlier than 30 days after the Borrower's Financial Disclosure for Mediation has been transmitted to the plaintiff.

Once the date, time, and place of the mediation session have been scheduled by the Program Manager, the Program Manager shall promptly file with the clerk of court and serve on all parties a notice of the mediation session.

13. **Attendance at Mediation.** The following persons are required to be physically present at the mediation session: a plaintiff's representative designated in the most recently filed Form A; plaintiff's counsel; and the borrower's counsel of record, if any. However, the plaintiff's representative may appear at mediation through the use of communication equipment, if plaintiff files and serves at least five (5) days prior to the mediation a notice in the format of Exhibit 7 attached advising that the plaintiff's representative will be attending through the use of communication equipment and designating the person who has full authority to sign any settlement agreement reached. Plaintiff's counsel may be designated as the person with full authority to sign

the settlement agreement.

At the time that the mediation is scheduled to physically commence, the Program Manager shall enter the mediation room prior to the commencement of the mediation conference and, prior to any discussion of the case in the presence of the mediator, take a written roll. That written roll will consist of a determination of the presence of the borrower; the borrower's counsel of record, if any; the plaintiff's lawyer; and the plaintiff's representative with full authority to settle. If the Program Manager determines that anyone is not present, that party shall be reported by the Program Manager as a non-appearance by that party on the written roll. If the Program Manager determines that the plaintiff's representative present does not have full authority to settle, the Program Manager shall report that the plaintiff's representative did not appear on the written roll as a representative with full settlement authority as required by this Administrative Order. The written roll and communication of authority to the Program Manager is not a mediation communication.

The authorization by this Administrative Order for the plaintiff's representative to appear through the use of communication equipment is pursuant to Rule 1.720(b), *Florida Rules of Civil Procedure* (court order may alter physical appearance requirement), and in recognition of the emergency situation created by the massive number of residential foreclosure cases being filed in this circuit and the impracticality of requiring physical attendance of a plaintiff's representative at every mediation. Additional reasons for authorizing appearance through the use of communication equipment for mortgage foreclosure mediation include a number of protective factors that do not exist in other civil cases, namely the administration of the program by a program manager, pre-mediation counseling for the borrower, and required disclosure of information prior to mediation. The implementation of this Administrative Order shall not create any expectation that appearance through the use of communication equipment will be authorized in other civil cases.

If the plaintiff's representative attends mediation through the use of communication equipment, the person authorized by the plaintiff to sign a settlement agreement must be physically present at mediation. If the plaintiff's representative attends mediation through the use of communication equipment, the plaintiff's representative must remain on the communication equipment at all times during the entire mediation session. If the plaintiff's representative attends through the use of communication equipment, and if the mediation results in an impasse, within five (5) days after the mediation session, the plaintiff's representative shall file in the court file a certification in the format of Exhibit 8 attached as to whether the plaintiff's representative attended mediation. If the mediation results in an impasse after the appearance of the plaintiff's representative through the use of communication equipment, the failure to timely file the certification regarding attendance through the use of communication equipment shall be grounds to impose sanctions against the plaintiff, including requiring the physical appearance of the plaintiff's representative at a second mediation, taxation of the costs of a second mediation to the plaintiff, or dismissal of the action.

Junior lienholders may appear at mediation by a representative with full settlement authority. If a junior lienholder is a governmental entity comprised of an elected body, such junior lienholder may appear at mediation by a representative who has authority to recommend settlement to the governing body. Counsel for any junior lienholder may also attend the mediation.

The participants physically attending mediation may consult on the telephone during the mediation with other persons as long as such consultation does not violate the provisions of §44.401-406, *Florida Statutes*.

14. **Failure to Appear at Mediation.** If either the plaintiff's representative designated in the most recently filed Form A or the borrower fails to appear at a properly noticed mediation and the mediation does not occur, or when a mediation results in an impasse, the report of the mediator shall notify the presiding judge regarding who appeared at mediation without making further comment as to the reasons for an impasse. If the borrower fails to appear, or if the mediation results in an impasse with all required parties present, and if the borrower has been lawfully served with a copy of the complaint, and if the time for filing a responsive pleading has passed, the matter may proceed to a final hearing, summary judgment, or default final judgment in accordance with the rules of civil procedure without any further requirement to attend mediation. If plaintiff's counsel or the plaintiff's representative fails to appear, the court may dismiss the action without prejudice, order plaintiff's counsel or the plaintiff's representative to appear at mediation, or impose such other sanctions as the court deems appropriate, including, but not limited to, attorney's fees and costs if the borrower is represented by an attorney. If the borrower or borrower's counsel of record fails to appear, the court may impose such other sanctions as the court deem appropriate, including, but not limited to, attorney's fees and costs.

15. **Written Settlement Agreement; Mediation Report.** If a partial or final agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. Pursuant to Rule 1.730(b), *Florida Rules of Civil Procedure*, if a partial or full settlement agreement is reached, the mediator shall report the existence of the signed or transcribed agreement to the court without comment within 10 days after completion of the mediation. If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the court without comment or recommendation. In the case of an impasse, the report shall advise the court who attended the mediation, and a copy of Form A or any amended Form A shall be attached to the report for the court to determine if at least one of the plaintiff's representatives named in Form A appeared for mediation. The mediator's report to the court shall be in the format of Exhibit 9 attached.

16. **Mediation Communications.** All mediation communications occurring as a result of this Administrative Order, including information provided to the Program Manager that is not filed with the court, shall be confidential and inadmissible in any subsequent legal proceeding pursuant to Chapter 44, *Florida Statutes*, the *Florida Rules of Civil Procedure*, and the *Florida Rules for Certified and Court-Appointed Mediators*, unless otherwise provided for by law.

17. **Failure to Comply with Administrative Order.** In all residential foreclosure actions, 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. In cases involving a homestead residence, the presiding judge shall require that copies of either 1) the most recently

filed Form A and the report of the mediator, or 2) the most recently filed Form A and the notice of borrower's nonparticipation be sent to the presiding judge by the plaintiff or plaintiff's counsel prior to setting a final hearing or delivered with the packet requesting a summary or default final judgment. Unless otherwise ordered by the court, a certificate of compliance in the format of Exhibit 12 attached shall be filed with a motion for default final judgment, a motion for summary judgment, or a notice for trial. A copy of the certificate of compliance must accompany the submission of any proposed order for a default final judgment, summary judgment, or final judgment of foreclosure.

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.

18. **Mediation Not Required if Residence is Not Homestead.** If the plaintiff certifies in Form A that the property is NOT a homestead residence when suit is filed, plaintiff's counsel must file and serve with the complaint a certification identifying the agent of plaintiff who has full authority to settle the case without further consultation. The certification shall be in the form of Exhibit 10 attached.

If the plaintiff certifies in Form A that the property is NOT a homestead residence, the matter may proceed to a final hearing, summary judgment, or default final judgment in accordance with the rules of civil procedure without any further requirement to attend mediation, unless otherwise ordered by the presiding judge.

RMFM Program Fees

19. **RMFM Program Fees.** The fee structure for the RMFM Program is based on the assumption that a successful mediation can be accomplished with one mediation session. Accordingly, pursuant to Rule 1.720(g), *Florida Rules of Civil Procedure*, the reasonable program fees for the managed mediation, including foreclosure counseling, the mediator's fee, and administration of the managed mediation program, is a total of \$750.00 payable as follows:

1) \$400.00 paid by plaintiff at the time suit is filed for administrative fees (\$275.00) of the RMFM Program, including outreach to the borrower and foreclosure counseling fees (\$125.00); and

2) \$350.00 paid by plaintiff within 10 days after notice of the mediation conference is filed for the mediation fee component of the RMFM Program fees.

If more than one mediation session is needed, the total program fee stated above will also cover a second mediation session. However, if an additional mediation session is needed after the second session, the plaintiff shall be responsible for the payment of the program fees for such additional mediation sessions, unless the parties agree otherwise. The program fees for the third and each subsequent mediation session shall be \$350.00 per session.

All program fees shall be paid directly to the Program Manager. If the case is not resolved through the mediation process, the presiding judge may tax the program fees as a cost or apply it as a setoff

in the final judgment of foreclosure.

If the borrower cannot be located, chooses not to participate in the RMFM Program, or if the borrower does not make any contact with the foreclosure counselor, the plaintiff shall be entitled to a refund of the portion of the program fees attributable to foreclosure counseling. If mediation is scheduled and the borrower announces an intention not to participate further in the RMFM Program prior to the mediation session, or if the case settles and the Program Manager has notice of the settlement at least five (5) days prior to the mediation session the plaintiff shall be entitled to a refund of the program fees allocated for the mediation session. If notice of settlement is not received by the Program Manager at least five (5) days prior to the scheduled mediation session, the plaintiff shall not be entitled to any refund of mediation fees.

The total fees include the mediator's fees and costs; the cost for the borrower to attend a foreclosure counseling session with an approved mortgage foreclosure counselor; and the cost to the Program Manager for administration of the managed mediation program which includes, but is not limited to, providing neutral meeting and caucus space, scheduling, telephone lines and instruments, infrastructure to support a web-enabled information platform, a secure dedicated e-mail address or other secure system for information transmittal, and other related expenses incurred in managing the foreclosure mediation program.

Program Manager to Monitor Compliance and Satisfaction

20. Monitoring Compliance Concerning Certain Provisions of this Administrative Order, Satisfaction with RMFM Program, and Program Operation. The Program Manager shall be responsible for monitoring whether Form A has been filed in all residential foreclosure actions that commence after the effective date of this Administrative Order and whether the RMFM Program fees have been paid if the residence is a homestead residence. The Program Manager shall send compliance reports to the chief judge or the chief judge's designee in the format and with the frequency required by the chief judge.

The Program Manager may assist with enforcing compliance with this Administrative Order upon filing a written motion pursuant to Rule 1.100(b), *Florida Rules of Civil Procedure*, stating with particularity the grounds therefor and the relief or order sought. Example orders are attached as Exhibit 11.

The Program Manager shall also provide the chief judge with periodic reports as to whether plaintiffs and borrowers are satisfied with the RMFM Program.

The Program Manager shall also provide the chief judge with reports with statistical information about the status of cases in the RMFM Program and RMFM Program finances in the format and with the frequency required by the chief judge.

The Program Manager shall provide to the Clerk of the Court all original compliance reports, together with the activity report; all original mediator's reports; and any original motions submitted to the Program Manager.

21. **Designation of Plaintiff Liaisons with RMFM Program.** Any plaintiff who has filed five (5) or more foreclosure actions in the First Judicial Circuit while this Administrative Order is in effect shall appoint two RMFM Program liaisons, one of whom shall be a lawyer and the other a representative of the entity servicing the plaintiff's mortgages, if any, and, if none, a representative of the plaintiff. Plaintiff's counsel shall provide written notice of the name, phone number (including extension), e-mail, and mailing address of both liaisons to the chief judge and the Program Manager within 30 days after the effective date of this Administrative Order, and on the first Monday of each February thereafter while this Administrative Order is in effect.

The liaisons shall be informed of the requirements of this Administrative Order and shall be capable of answering questions concerning the administrative status of pending cases and the party's internal procedures relating to the processing of foreclosure cases, and be readily accessible to discuss administrative and logistical issues affecting the progress of the plaintiff's cases through the RMFM Program. Plaintiff's counsel shall promptly inform the chief judge and Program Manager of any changes in designation of the liaisons and the contact information of the liaisons. The liaisons shall act as the court's point of contact in the event the plaintiff fails to comply with this administrative Order on multiple occasions and there is a need to communicate with the plaintiff concerning administrative matters of mutual interest.

List of Participating Mediators and Rotation of Mediators

22. **List of Participating Mediators and Rotation of Mediators.** The Program Manager shall post on its website the list of Florida Supreme Court certified mediators it will use to implement the RMFM Program and will state in writing the criteria, subject to approval by the chief judge, the program will use in selecting mediators. The Program Manager shall also state in writing the procedure, subject to the approval by the chief judge, the program will use to rotate the appointment of mediators, and maintain a list as to which mediation site(s) in the First Circuit the mediators designate their willingness to mediate. The RMFM Program shall encourage the use of mediators who have been trained to mediate mortgage foreclosure cases, reflecting the diversity of the community in which it operates. Assignment of mediators shall be on a rotation basis that fairly spreads work throughout the pool of mediators working in the RMFM Program, unless the parties mutually agree on a specific mediator or the case requires a particular skill on the part of the mediator.

Mediators who are on the list of approved mediators maintained by the Program Manager on the date this Administrative Order is signed may continue to mediate cases referred to the RMFM Program, however, such mediators shall not continue working in the RMFM Program if they have not completed the training requirements imposed by Paragraph 2 above within 90 days after the effective date of this Administrative Order.

Pre-Suit Mediation Encouraged

23. **Pre-Suit Mediation.** Mortgage lenders, whether private individuals, commercial institutions, or mortgage servicing companies, are encouraged to use any form of alternative dispute resolution, including mediation, *before* filing a mortgage foreclosure lawsuit with the clerk of the court.

Lenders are encouraged to enter into the mediation process with their borrowers *prior* to filing foreclosure actions in the First Judicial Circuit to reduce the costs to the parties for maintaining the litigation and to reduce to the greatest extent possible the stress on the limited resources of the courts caused by the large numbers of such actions being filed across the state and, in particular, in the First Judicial Circuit.

If the parties participated in pre-suit mediation using the RMFM Program or participated in any other pre-suit mediation program having procedures substantially complying with the requirements of this Administrative Order, including provisions authorizing the exchange of information, foreclosure counseling, and requiring use of Florida Supreme Court certified circuit civil mediators specially trained to mediate residential mortgage foreclosure actions, the plaintiff shall so certify in Form A, in which case the plaintiff and borrower shall not be required to participate in mediation again unless ordered to do so by the presiding judge. A borrower may file a motion contesting whether pre-suit mediation occurred in substantial compliance with the RMFM Program.

Nothing in this paragraph precludes the presiding judge from sending the case to mediation after suit is filed, even if pre-suit mediation resulted in an impasse or there was a breach of the pre-suit mediation agreement.

This Administrative Order shall be recorded by the clerk of the court in each county of the First Judicial Circuit, takes effect on March 29, 2010, and will remain in full force and effect unless and until otherwise ordered, and it amends and replaces Administrative Order 2009-18.

ORDERED on February 26, 2010.

Signed by: Terry D. Terrell, Chief Judge

Attachments

THIS ADMINISTRATIVE ORDER IS ACCOMPANIED BY ATTACHMENTS THAT ARE NOT COMPATIBLE WITH SCREEN READERS. IF YOU WISH TO OBTAIN A COPY OF THE ATTACHMENTS TO THIS ADMINISTRATIVE ORDER, PLEASE CONTACT COURT ADMINISTRATION AT 850-595-4400.