

STATE OF ILLINOIS
CIRCUIT COURT
SEVENTEENTH JUDICIAL CIRCUIT

RECEIVED

2012 APR 13 P 1:50
BRENDAN MAHER
Circuit Judge
AOIC 840



BOONE COUNTY COURTHOUSE
601 North Main Street
Belvidere, Illinois 61008
Phone: (815) 547-8115
Fax (815) 547-9213

April 11, 2012

Supreme Court Mortgage Foreclosure Committee
c/o Administrative Office of the Illinois Courts
3101 Old Jacksonville Road
Springfield, Illinois 62704

Re: Comments on Mortgage Foreclosure Committee Discussion Points

Committee Members:

This letter is in response to the April 4, 2012, request for comment regarding proposals to improve mortgage foreclosure proceedings in Illinois. I am writing in my capacity as the Presiding Judge of the Boone County Division of the 17th Judicial Circuit (Winnebago and Boone Counties) on behalf of myself and my colleagues Circuit Judges J. Edward Prochaska and Eugene G. Doherty. Collectively, the three of us currently handle substantially all of our Circuit's mortgage foreclosure cases.

We have met and discussed the nine-point proposal for comment drafted by the Practices and Procedures Subcommittee ("Subcommittee") of the Mortgage Foreclosure Committee ("Committee"). A copy of the nine-point proposal is enclosed for reference. Following our discussion, we respectfully submit the following thoughts and comments regarding the nine listed points. For ease of cross-reference, our comments are set forth below in numbered paragraphs, each corresponding to the nine numbered discussion points drafted by the subcommittee:

(1) We approve of the recommendation that the Supreme Court adopt a rule establishing a model prove-up affidavit as long as the content of the prove-up affidavit is not inconsistent or in conflict with any specific provision of the statutes governing foreclosures.

(2) We do not believe that it is necessary to require plaintiffs to attach a payment history to prove-up affidavits unless: (1) the defendant(s) have filed an appearance in the case; and (2) the defendant(s) have filed a verified answer to the foreclosure complaint in which they deny the amount of the deficiency alleged as of the date the complaint was filed.

(3) Under the existing statutes and their interpretive case law, we do not believe that it is necessary or appropriate to adopt a rule requiring plaintiffs to attach a copy of each assignment

of the mortgage being foreclosed or a copy of the “note as it currently exists” to the foreclosure complaint. If the defendant(s) have filed their appearance and have specifically denied the allegation that the plaintiff is the current holder of the mortgage and the note, then the defendant(s) would be entitled to discovery on that issue. Unless the parties are at issue, however, if the allegations in the complaint comply with the pleading requirements set forth at 735 ILCS 5/15-1504, we believe that further attachments and exhibits at the complaint stage would not necessarily improve the foreclosure process.

(4) We do not understand the purpose of the rule proposed at this paragraph, or the problem or issue the subcommittee sought to solve. Without an understanding of the targeted problem, this proposed rule seems arbitrary and possibly counter-productive in situations where the plaintiff and defendant(s) may be in the process of exploring refinancing, short-sales, loan modifications or other accommodations even after the redemption period has expired.

(5) We approve of the recommendation that the Supreme Court adopt a Rule requiring that upon entry of a judgment of foreclosure and sale, the plaintiff be required to send a notice to all defendants, including defendants in default, of the foreclosure sale date, time and location. We would recommend that any such rule also require the plaintiff to file a “proof of mailing” or “proof of service” with the Circuit Clerk’s office specifically indicating that the rule has been complied with. We suggest that the Subcommittee and the Committee consider whether the rule should include language prohibiting the entry of an order confirming the sale unless the “proof of service” or “proof of mailing” was, in fact, filed with the Circuit Clerk before the occurrence of the judicial sale.

(6) We question whether the Illinois Supreme Court has the authority to “require” that the State’s Circuit Clerk’s offices perform the list of tasks set forth in discussion point #6, and we note that most Circuit Clerk’s offices, including the Circuit Clerk’s offices in Winnebago and Boone County, are struggling with the same types of budget cuts currently affecting all levels of State and Local government in Illinois. Moreover, we note that the list of tasks identified in discussion point #6 appear to require some level of discretionary file review in order to insure that all of the tasks are completed accurately – a burden that should not be imposed on individual employees of the State’s Circuit Clerk’s offices. To the extent that the Subcommittee and the Committee believe that the information listed in this discussion point should be conveyed to defaulted borrowers, we suggest that the burden be imposed on the plaintiff and be incorporated into the Rule proposed at discussion point #5, above. And again, if the plaintiff cannot demonstrate compliance with the listed requirements, we suggest that the Subcommittee and the Committee consider whether the rule should include language prohibiting the entry of an order confirming the sale until compliance can be demonstrated.

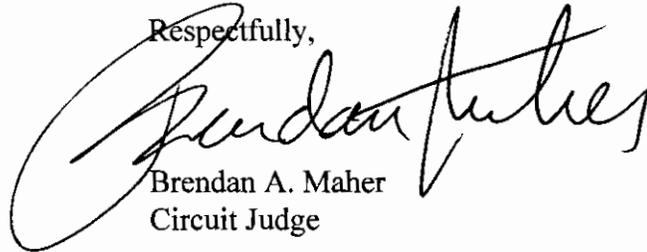
(7) We approve of the recommendation set forth in discussion point #7.

(8) Though we do not necessarily object to this proposal, we do not understand the purpose of the proposed rule, or the problem or issue the subcommittee sought to solve in light of the fact that 735 ILCS 5/15-1512(d) already addresses the process for distributing a surplus.

(9) We do not understand the purpose of the rule proposed at this paragraph, or the problem or issue the subcommittee sought to solve in light of the fact that Illinois Supreme Court Rule 137 already provides that an attorney's signature on any pleading is a representation that he or she has read the pleading and that, "after reasonable inquiry," the pleading is well grounded in fact, warranted by existing law and not interposed for any improper purpose.

On behalf of my colleagues in the 17th Judicial Circuit, thank you for the opportunity to provide input and comments on the Subcommittee's discussion points. If you have any questions, or seek further input from our Circuit, please do not hesitate to contact any of us.

Respectfully,

A handwritten signature in black ink, appearing to read "Brendan Maher", written in a cursive style. The signature is positioned above the printed name and title.

Brendan A. Maher
Circuit Judge

Enclosure

cc: Circuit Judge J. Edward Prochaska, Presiding Judge, Civil Division (with enclosure)
Circuit Judge Eugene G. Doherty (with enclosure)

**ILLINOIS SUPREME COURT
MORTGAGE FORECLOSURE COMMITTEE**

On April 11, 2011, the Illinois Supreme Court created the Mortgage Foreclosure Committee and charged it with the task of investigating the procedures currently used throughout Illinois in mortgage foreclosure proceedings; studying relevant Supreme Court Rules and local rules that directly or indirectly affect such proceedings; analyzing the procedures adopted in other states in response to the unprecedented number of foreclosure filings nationwide; reviewing legislative proposals pending in the Illinois General Assembly that may impact the present statutory scheme for mortgage foreclosures; and ultimately recommending to this Court mortgage foreclosure rules for statewide. To meet this charge, the Committee established subcommittees, including a Practice and Procedures Subcommittee.

The following nine discussions points are submitted by the Practice and Procedure Subcommittee for comment at public hearing:

1. The Committee recommends that the Supreme Court adopt a rule establishing a model foreclosure prove up affidavit.

2. The Committee seeks input on whether plaintiffs be required to attach a payment history to prove up affidavits.

3. The Committee recommends that the Supreme Court adopt a rule requiring that a copy of each assignment of the mortgage being foreclosed be attached to the foreclosure complaint, and that a copy of the note, as it currently exists, including all endorsements and allonges, is attached to the foreclosure complaint.

4. The Committee recommends that the Supreme Court adopt a rule requiring that all foreclosure sales be held within forty-five (45) days of the expiration of the redemption period unless extended by direction of the plaintiff or by court order.

5. The Committee recommends that the Supreme Court adopt a rule requiring that upon entry of a judgment of foreclosure and sale, plaintiff be required to send notice to all defendants, including defendants in default, of the foreclosure sale date, time and location.

6. The Committee recommends that the Supreme Court adopt a rule requiring court clerks to send a notice to all defaulted borrowers. The notice should advise defaulted borrowers that: (1) the court has entered a default order of foreclosure and sale; (2) the borrower may file a motion to vacate that order as soon as possible; (3) the borrower may redeem the property from foreclosure by paying the total amount due plus fees and costs, by a specific calendar day; (4) referring the borrower to local resources for legal assistance in preparing a motion to vacate; and (5) advising the borrower to act immediately. The court clerk should be required to send the notice of default to the property address and to any secondary address at which the borrower was served with process and to place proof of this service in the court file.

Committee on Mortgage Foreclosure
Public Hearing
Practice and Procedure Issues

7. The Committee recommends that the Supreme Court adopt a rule, or that the Illinois Code of Civil Procedure be amended to require that a special representative be appointed to stand in the place of deceased mortgagors in cases where no estate has been opened.

8. The Committee recommends that the Supreme Court adopt a rule that in instances where the sale of a foreclosed property generates a surplus over the amount owed to lien holders as set forth in the judgment, the plaintiffs' attorney send a special notice to the mortgagors advising them of the surplus and enclosing a simple form to file with the court clerk to claim the surplus, and that any person claiming a surplus be required to appear in open court to be examined under oath and identified on the record as being the same person as the one authorized to claim the surplus.

9. The Committee seeks input on whether the Supreme Court adopt a rule requiring plaintiffs' attorneys to file a separate affidavit along with the prove up affidavit stating that they had spoken to a specifically-named person who worked for their client and verified, through that conversation, that the figures were correct and the foreclosure was justified.