

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS
TO THE FLORIDA RULES OF
CIVIL PROCEDURE**

CASE NO. SC09-1460

**COMMENTS OF THE SIXTH JUDICIAL CIRCUIT REGARDING
PROPOSED AMENDMENTS TO THE RULES OF CIVIL PROCEDURE
RECOMMENDED BY THE TASK FORCE ON RESIDENTIAL
MORTGAGE FORECLOSURE CASES**

COMES NOW, J. Thomas McGrady, the Chief Judge of the Sixth Judicial Circuit, by and through the undersigned counsel, in response to this Court's request for comments, and provides the following comments.

1. The Supreme Court Task Force on Residential Mortgage Foreclosure Cases submitted its Final Report and Recommendations to the Court on August 17, 2009. The Task Force recommended amendments to the Rules of Civil Procedure and Forms for use with the Rules of Civil Procedure. The Task Force also submitted recommendations for the Court's consideration.

2. The Court invited comments on the proposed Rules and established a deadline of October 1, 2009. The Court also invited comments on the recommendations and established a deadline of October 15, 2009 for comments on the recommendations. This filing is limited to comments on the proposed Rules. The Chief Judge anticipates submitting separate comments on the recommendations by the October 15, 2009, deadline.

3. The Task Force proposes a new Affidavit of Diligent Search form. In the petition, the Task Force states: “the most significant addition is the additional criteria that if the process server serves an occupant in the property, he inquires of that occupant whether he knows the location of the borrower-defendant.” In an apparent oversight, the form does not include this provision, something that may be an important source of information to locate the defendant. A new item should be specifically added for the process server to state: “I inquired of the occupant of the premises whether the occupant knows the location of the borrower-defendant, with the following results: _____.”

4. Item 2 on the form Affidavit of Diligent Search is not clear. If this is intended to be a summary statement by the process server, it should state it clearly.

Respectfully submitted,

B. Elaine New
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to The Honorable Jennifer D. Bailey, 73 W. Flagler Street, Suite 1307, Miami, FL 33130-4764; Mark A. Romance, Chair of Civil Procedure Rules Committee, Richman Greer P.A., 201 S. Biscayne Blvd., Ste 1000, Miami, FL 33131-4327; and Jack Harkness, Executive Director, The Florida Bar, 651 E. Jefferson Street, Tallahassee, FL 32399-6584, this 30th day of September 2009.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule of Appellate Procedure 9.100(l) I certify that this computer generated response is prepared in Times New Roman 14 point font and complies with the Rule's font requirements.

B. Elaine New