

**IN THE SUPREME COURT OF FLORIDA**

IN RE: AMENDMENTS TO RULES OF  
CIVIL PROCEDURE AND FORMS FOR  
USE WITH RULES OF CIVIL PROCEDURE

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Case No. 09-1460

**COMMENTS OF LEGAL SERVICES OF NORTH FLORIDA INC., AND  
THE NORTH FLORIDA CENTER FOR EQUAL JUSTICE INC.**

Legal Services of North Florida, Inc. (hereafter LSNF) and The North Florida Center For Equal Justice, Inc. (hereafter The Center) pursuant to the notice published in the September 15, 2009, issue of *The Florida Bar News* file these comments to the *Final Report and Recommendations on Residential Mortgage Foreclosure Cases* dated August 17, 2009.

**INTRODUCTION**

Legal Services of North Florida, Inc. and The North Florida Center For Equal Justice, Inc. are organizations with a combined staff of over 20 legal services and public services attorneys serving 16 counties in North Florida from Tallahassee to Pensacola. Both organizations specialize in housing and consumer issues, including defense of homeowners facing foreclosure. We strongly support the comments that will be filed by the Housing and Consumer Umbrella Groups of Florida Legal Services. We also make the following suggestion to improve the fairness of the mediation process and to improve the outcomes of mediations statewide.

Recently, we have experienced the following situation in defending foreclosures in Escambia County. The Defendant borrower is often ordered to mediation shortly after being served. In one instance the mediation was set one day after the defendant was served. The Taskforce report and recommendation has this to say on scheduling mediation. “The plaintiff’s representative, plaintiff’s counsel and the borrower are all required to timely comply with the time limitations imposed by this Administrative Order and attend the mediation session as scheduled by the Program Manager. No earlier than 60 days and no later than 120 days after the suit is filed, the Program Manager shall schedule a mediation session. The mediation session shall be at a time convenient to the plaintiff’s representative, the borrower, and counsel for the Plaintiff ....” Appendix J, page 9. We suggest avoiding a borrower being forced to appear at mediation shortly after being served that the language be changed to “after service on the Defendant”, instead of after the suit is filed. This allows the borrower to at least file responsive pleadings and do some discovery before going to mediation.

We support the changes to amendment to the proposed Rule 1.110, GENERAL RULES OF PLEADING offered by Terry Rankin of the Florida Bar Civil Rules Committee with this exception. Proposed Rule 1.110 (2) which we believe is not needed because the appropriate potential plaintiffs are defined in subsection (1). The proposed change reads as follows: “any holder of the

promissory note or other amendments secured by the mortgage who is not an owner shall be made a party defendant.” The word “holder” should only be used as defined in Florida Statute’s Section 673.3011. As defined in that section a holder may not be a party defendant. Therefore subsection (2) should be removed.

### CONCLUSION

Legal Services of North Florida, Inc. and The North Florida Center For Equal Justice, Inc. support the members of the Housing and Consumer Umbrella Groups comments. We offer our additional comments, one of which is specific to mediation as it is happening in North Florida and the other to remove confusion by eliminating a proposed new section related to “holders” which appears inconsistent with the statutory definition.

Respectfully submitted,

Scott Manion

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CERTIFICATE OF SERVICE

I certify that a copy of the Comments of the Legal Services of North Florida Inc, and The North Florida Center for Equal Justice has been sent by U.S. Mail to the Honorable Jennifer D. Bailey, Task Force chair, 73 W. Flagler Street, Suite 1307, Miami, Florida 33130-4764 this \_\_\_\_\_ day of October, 2009.

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Scott Manion