

Electronically Filed
Supreme Court
SCMF-10-0000108
27-MAR-2012
02:50 PM

SCMF-10-0000108

In the Matter of the
FORECLOSURE MEDIATION PILOT PROJECT
Circuit Court of the Third Circuit

ORDER MODIFYING AND EXTENDING THE FORECLOSURE MEDIATION PILOT
PROJECT IN THE THIRD CIRCUIT COURT OF THE STATE OF HAWAI'I
(By: Recktenwald, C.J., Nakayama, Acoba, Duffy, and McKenna, JJ.)

We have considered (1) our September 29, 2009 Order Establishing the Foreclosure Mediation Pilot Project in the Third Circuit Court of the State of Hawai'i, (2) our October 28, 2010, January 27, 2011, and February 10, 2011 Orders Extending the Foreclosure Mediation Pilot Project in the Third Circuit Court of the State of Hawai'i, and (3) the Foreclosure Mediation Pilot Project Report for the period of December 1, 2010 through February 29, 2012 submitted by the Circuit Court of the Third Circuit. We conclude the Foreclosure Mediation Pilot Project should be extended, with additional amendments, as set out below. Therefore,

IT IS HEREBY ORDERED that the Foreclosure Mediation Pilot Project is extended until further order of this court.

IT IS FURTHER ORDERED, notwithstanding anything to the contrary in our September 29, 2009 Order Establishing the Foreclosure Mediation Pilot Project in the Third Circuit Court of the State of Hawai'i, the subsequent orders modifying and extending the project, or any court rule, that in each foreclosure action filed in the Circuit Court of the Third Circuit:

- (1) the Plaintiff shall attach to the complaint and summons, and serve upon the borrower(s):
 - (a) a Foreclosure Mediation Notice that substantially conforms to the form set forth in Attachment A appended hereto, and
 - (b) a Foreclosure Mediation Request form that substantially conforms to the form set forth in Attachment B appended hereto.
- (2) the plaintiff shall file with any request for entry of default, in a form that substantially complies with Attachment C appended hereto, a certification that the Foreclosure Mediation Notice and the Foreclosure Mediation Request were served upon the borrower.

- (3) an eligible defendant-borrower who desires mediation shall complete and file a Foreclosure Mediation Request in a form that substantially conforms to the form set forth in Attachment B appended hereto.
- (4) the plaintiff, no later than 15 days before the mediation conference, shall provide to the mediator the following information:
 - (a) A copy of the promissory note, signed by the defendant-borrower, including any endorsements, allonges, amendments, or riders to the note evidencing the mortgage debt,
 - (b) A copy of the mortgage document and any amendments, riders, or other documentation evidencing the plaintiff's right of nonjudicial foreclosure and interest in the property including any interest as a successor or assignee, and
 - (c) Financial records and correspondence that confirm the mortgage loan is in default.
- (5) the defendant-borrower, no later than 15 days before the mediation conference, shall provide to the mediator the following information:

- (a) Documentation showing income qualification for a loan modification, including copies of pay stubs, W-2 forms, social security or disability income, retirement income, child support income, or other income that the defendant-borrower deems relevant to the defendant-borrower's financial ability to repay the mortgage;
- (b) Records or correspondence available that may dispute the mortgage loan is in default;
- (c) Records or correspondence evidencing a loan modification or amendment;
- (d) Records or correspondence that indicate the parties are currently engaged in bona fide negotiations to modify the loan or negotiate a settlement of the delinquency;
- (e) Names and contact information for housing counselors, approved budget and credit counselors, or representatives of the mortgagee, with whom the defendant-borrower may have or is currently working with to address the delinquency; and
- (f) Verification of counseling by an approved housing counselor or approved budget and

credit counselor.

- (6) If the subject property is located in the Districts of Ka'u, Puna, North Hilo, South Hilo, or Hamakua, the case will be heard in Hilo and the Foreclosure Mediation Request shall be filed at the:

Legal Documents Branch/Section
Circuit Court of the Third Circuit
Hale Kaulike
777 Kilauea Avenue
Hilo, Hawai'i, 96720

- (7) If the subject property is located in the Districts of North Kona, South Kona, North Kohala, or South Kohola, the case will be heard in Kona and the Foreclosure Mediation Request shall be filed at the:

Legal Documents Branch
Circuit Court of the Third Circuit, Kona
Division
Keakealani Building
79-1020 Haukapila Street
Kealahou, Hawai'i, 96750

- (8) A defendant-borrower seeking mediation shall mail or deliver a file-stamped copy of the Foreclosure Mediation Request, no later than fifteen (15) days after service of the Foreclosure Mediation Notice, to:
- (a) the attorney for the plaintiff,

- (b) the Honorable Greg Nakamura, if the case is to be heard in Hilo,
 - (c) the Honorable Ronald Ibarra, if the case is to be heard in Kona.
- (9) upon the filing of the Foreclosure Mediation Request, the deadlines to file and serve the answer to the complaint and to seek relief by dispositive motion are suspended, until further order of the circuit court.
 - (10) the legal documents branch or section shall forward the filed Foreclosure Mediation Request to the appropriate judge.
 - (11) the plaintiff's attorney shall, within ten (10) days after the filing of the Foreclosure Mediation Request, schedule a pre-mediation conference with the judge and shall provide notice of the conference to the defendant-borrower.
 - (12) all parties shall attend the pre-mediation conference in person with the judge unless authorized to appear by telephone.
 - (13) the judicial clerk shall monitor the process and inform the judge of non-compliance.
 - (14) the judge shall order appropriate consequences for non-compliance.

- (15) at the pre-mediation conference the judge shall determine whether the case is appropriate for mediation, and should, among other factors,
- (a) consider whether the primary borrower has resided in the residence for one (1) year immediately prior to the foreclosure proceedings,
 - (b) consider the borrower's ability to pay in light of the borrower's current income and other sources of revenue, and
 - (c) ask the plaintiff if there are other reasons for not referring the case to mediation.
- (16) if mediation is denied, the judge's Order Denying Mediation shall
- (a) set the time for the defendant to file and serve an answer to the complaint and the time for filing any dispositive motions,
 - (b) include reasons for the denial, and
 - (c) be filed and a filed copy shall be forwarded to the Third Circuit Court Program Specialist.
- (17) if mediation is ordered, the judge shall schedule a status conference in forty-five (45) days to address the status of the mediation. The status conference may be held by telephone conference.

- (18) an Order Granting Mediation shall
- (a) identify the plaintiff bank's representative by position, and the bank's representative and the bank's attorney shall be present at the mediation with full authority to settle, provided the Third Circuit Court may allow a party's representative or attorney to appear by telephone or other electronic means,
 - (b) instruct the defendant-borrower to produce financial documents (similar to the documents required to obtain a loan) or other documents the mediator requests, and
 - (c) be filed and a filed copy shall be forwarded to the Third Circuit Court Program Specialist.
- (19) if the case is to be mediated, the court shall appoint a mediator and forward copies of the complaint, summons, and Foreclosure Mediation Order to the mediator.
- (20) if the mediation is successful, the parties shall either
- (a) prepare and file a written settlement with the court, or
 - (b) schedule a hearing to place the settlement on the record.

- (21) if the mediation is unsuccessful, the mediator shall send a report to the court.
- (22) upon completion of the mediation,
- (a) the judge's clerk shall submit a report of the result of the mediation to the Third Circuit Court Program Specialist, and
 - (b) the court shall issue an Order Discharging the Mediator and setting a time to answer the complaint.

IT IS FURTHER ORDERED that the Third Circuit Court Program Specialist shall write a Foreclosure Mediation Pilot Project Report and the Third Circuit Court shall submit the report to this court no later than March 1, 2013 and each March 1 thereafter until the pilot project is concluded by order of this court.

IT IS FINALLY ORDERED that this order shall not apply to cases ordered to mediation pursuant to Rule 12.2 of the Rules of the Circuit Courts of the State of Hawai'i.

DATED: Honolulu, Hawai'i, March 27, 2012.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Simeon R. Acoba, Jr.

/s/ James E. Duffy, Jr.

/s/ Sabrina S. McKenna



IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

Case Name: _____

Civil No.: _____

FORECLOSURE MEDIATION NOTICE

You have been served with a foreclosure complaint that could cause the loss of your home.

The Court has a **Foreclosure Mediation Pilot Project** to assist parties to resolve foreclosure cases. You are eligible to participate in mediation under the Program if:

- (1) you are the borrower or co-borrower, and**
- (2) you occupy the property as your primary residence.**

Foreclosure mediation is a process in which a neutral mediator assists parties in trying to reach a voluntary agreement to avoid foreclosure. To help you prepare for mediation, you should consult with an attorney and with a HUD-certified counseling agency (which you can find by calling 1-888-995-4673 and/or going to www.995hope.org or www.gov/offices/hsg/sfh/hcc/hccprof14.frm). You may also bring your attorney to the mediation.

To participate in the Foreclosure Mediation Pilot Project, no later than 15 days after you were served with this Notice, you must complete the Foreclosure Mediation Request attached and file these two documents (original and 3 copies) at:

Legal Documents Branch/Section
Circuit Court of the Third Circuit
Hale Kaulike
777 Kilauea Avenue
Hilo, HI 96720

If the property is located in the Districts of Kau, Puna, North Hilo, South Hilo, or Hamakua, and the case will be heard in Hilo;

or at:

Legal Documents Branch
Circuit Court of the Third Circuit
Kona Division
Keakealani Building
79-1020 Haukapila Street
Kealakekua, HI 96750

If the property is located in the Districts of North Kona, South Kona, North Kohala, or South Kohala, and the case will be heard in Kona.

You must immediately mail or deliver a file-stamped copy of these two documents to the Plaintiff's attorney, _____, whose address is _____ and to:

The Honorable Greg Nakamura
Circuit Court of the Third Circuit
Hale Kaulike
777 Kilauea Avenue
Hilo, HI 96720

If the case is to be heard in Hilo;

or to:

The Honorable Ronald Ibarra
Circuit Court of the Third Circuit
Kona Division
Keakealani Building
79-1020 Haukapila Street
Kealakekua, HI 96750

If the case is to be heard in Kona.

A conference will be held with the Judge to consider the Mediation Request. You must attend the conference.

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

FORECLOSURE MEDIATION REQUEST

Your Name _____

Address _____

Home Phone _____ Cell Phone _____

Work Phone _____ Email address: _____

Mailing Address: _____

I request foreclosure mediation in my case and certify that I am the borrower or co-borrower in this case and I occupy the property referenced in this case as my primary residence.

Signature

Print Name

Date Signed

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Foreclosure Mediation Notice and the Foreclosure Mediation Request were served along with the complaint and summons on the defendants.

Defendants:

Plaintiff

Attorney for the Plaintiff

Dated: _____