



The Judiciary, State of Hawai'i

Testimony to the Senate Committee on Judiciary

Senator Karl Rhoads
Senator Glenn Wakai, Chair

Thursday, February 21, 2019, 10:00 a.m.
State Capitol, Conference Room 016

by

WRITTEN TESTIMONY ONLY

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Bill No. and Title: Senate Bill No. 866, Relating to Foreclosure.

Purpose: Provides that a minute order entered on a decree of foreclosure incorporating an order of sale or entered on an order confirming the sale of a foreclosed property shall operate as a final, appealable order.

Judiciary's Position:

The Judiciary respectfully, but strongly opposes Senate Bill No. 866 which seeks to amend section 667-51 of the Hawai'i Revised Statutes by providing that a minute order entered on a decree of foreclosure incorporating an order of sale or entered on an order confirming the sale of a foreclosed property shall operate as a final, appealable order.

The rationale for this proposed legislation is not stated in Senate Bill No. 866 and we are not aware of any committee report that addresses why this bill is necessary. We see no valid reason for the proposed amendment. To the contrary, the bill appears to run afoul of longstanding requirements laid out by the legislature and the courts concerning appeals from judgments.

Minute orders in civil cases in the Circuit Courts are, by their nature, general and short orders. Minute orders are not intended to be final and in foreclosure matters, do not contain detailed findings and orders that are necessary when a court grants a request to enter a decree of



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foreclosure and order of sale or when a court confirms a sale of a foreclosed property. If passed, Senate Bill No. 866 would allow for a poor record for appellate review and could pose an undue and unnecessary hardship on the courts and court staff.

HRS § 667-51 currently authorizes a party in a foreclosure action to assert an appeal from a judgment entered on a decree of foreclosure incorporating an order of sale or from a judgment entered on an order confirming sale of a foreclosed property, and that such judgments shall be deemed final and appealable. The statute is clear that a party can only appeal from judgments. The statute is also consistent with HRS § 641-1,¹ Rule 58 of the Hawai'i Rules of Civil Procedure,² and the Hawai'i Supreme Court's ruling in Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334, (1994).³

Thus, the proposed amendment appears to run afoul of the longstanding requirements laid out by the legislature and the courts concerning appeals from judgments.

Minute orders, by their nature, are general and short orders and are not intended to be final orders in civil cases in the Circuit Courts, let alone in foreclosure cases. Minute orders are not defined in the Hawai'i Revised Statutes or the Rules of Court. They are not signed by the judge and they are not file stamped, although they are part of the court record. Minute orders are also not docketed in the court file unlike documents that are file stamped and docketed, such as motions, orders, and judgments.

Typically in any civil case, including foreclosures, minute orders are prepared by the court clerk following a court hearing that sets forth the court's oral ruling in open court. Such minute orders are, in most instances, a general, short and plain statement of the court's oral ruling on a particular matter or request (e.g., "the court granted the motion and directed [counsel for the prevailing party] to prepare an order").⁴

¹ Appeals as of right or interlocutory, civil matters. (a) Appeals shall be allowed in civil matters from all final judgments, orders, or decrees of circuit and district courts and the land court to the intermediate appellate court, subject to chapter 602....(c) An appeal shall be taken in the manner and within the time provided by the rules of court.

² Rule 58 provides that "Every judgment shall be set forth on a separate document."

³ The Supreme Court of Hawai'i held in Jenkins that "[a]n appeal may be taken from circuit court orders resolving claims against parties only after the orders have been reduced to a judgment and the judgment has been entered in favor of and against the appropriate parties pursuant to HRCP [Rule] 58[.]" Jenkins, 76 Hawai'i at 119, 869 P.2d at 1338.

⁴ Court rules require the prevailing party to prepare a judgment, decree, or order in accordance with a judge's decision. See, Rule 23 of the Rules of the Circuit Courts, State of Hawai'i. Given the volume of foreclosure filings, it would be an extreme hardship on the courts and staff to prepare orders, judgments and decrees in every instance when a request for court decision is made.



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On occasion, a judge may take a matter or request under advisement during a hearing and the court clerk later enters the judge's decision which may be a short and general statement of the decision, or it may set forth the basis for the judge's ruling in more detail. In either instance, the court directs the prevailing party to prepare the written order for the judge's signature as required by the rules of court.⁵

Written orders that enter decrees of foreclosure and confirmations of sale that are signed by the judge are necessary because the written orders contain specific findings of fact, conclusions of law, and orders. If appeals are permitted from minute orders, which again by their nature are general and short, the appellate courts will not have the requisite findings needed for proper review, and may have to remand the proceedings back to circuit court for the record on appeal to be supplemented, further delaying proceedings for both litigants and court staff.

Written orders entering a decree of foreclosure or confirmation of sale consist of multiple pages and detailed facts and legal conclusions that must be entered whenever a decree of foreclosure is granted and when the court confirms a foreclosure sale. For example, the written orders specify the amounts owed by mortgagor(s) and detail the chain of title. The orders identify and appoint a commissioner to sell the foreclosed property, set forth the scope of the commissioner's authority to sell the property, instruct the commissioner on the terms of the sale, proper notice to the public and auction of the foreclosed property. These written orders also specify the approved sale price, the amounts to be distributed to the parties upon the sale of the property, and direct the commissioner to convey the property by deed to the purchaser.

Such detailed factual findings, conclusions of law, and orders are not contained in any minute order entered by the court clerk in foreclosure cases.

If passed, it may then become necessary for the court clerk to enter specific and detailed minute orders for a proper record on appeal. This would pose an undue hardship on the court clerk to enter pages and pages of detailed findings, conclusions and orders in minute orders. In the First Circuit alone, the presiding judge handling foreclosure matters entered nearly 750 written orders entering decrees of foreclosure and confirmations of sale in 2018.

For all of these reasons, the Judiciary strongly opposes Senate Bill No. 866.

⁵ Specifically, Rule 23 of the Rules of the Circuit Courts, State of Hawai'i.