



## COVER STORY Foreclosures

# Aggressively pushing open cases through the system

Miami-Dade circuit judges have been disposing of residential foreclosure cases at more than twice the rate of Broward judges. The goal is erasing the statewide backlog by 2016.



CANDACE WEST

Kathleen Pugh, Broward's trial courts administrator, said the circuit's share of the \$25 billion national foreclosure settlement would fund senior judges for 450 days.

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Miami-Dade circuit judges have been disposing of residential foreclosure cases at more than twice the rate of Broward judges, but all Florida circuits are following a game plan to rid themselves of their years-old backlogs by 2016.

Miami-Dade, which had South Florida's largest backlog, whittled pending cases by 28 percent to 37,611 on May 31 from 52,211 on June 30, 2012. Within the same time period, Broward lagged, cutting its load 7 percent to 41,895 from 45,118 cases. Palm Beach is down 13 percent to 28,632 from 32,977 cases in the same period.

Months earlier than Broward and Palm Beach counties, Miami-Dade became more aggressive in its approach. Foreclosure defense attorneys warned Miami-Dade's approach would lead to an increase in appellate reversals and a glut of unjust results.

There have been some notable reversals, but the vast majority of dispo-

sitions have stuck.

Each jurisdiction has some discretion on how to implement a reduction plan, but all refer back to the Foreclosure Initiative Workgroup, a committee of the state court system that attempted to reach a consensus on how to move forward after mortgage lenders lifted their self-imposed 2010-11 moratorium on new foreclosure filings after the robo-signing scandal.

The workgroup set statewide goals of reducing pending cases 8 percent from 358,852 in mid-2012 to 334,852 by the same time next year. That would drop to 238,852 by 2015 and 70,852 by 2016.

Predictions for a dramatic drop in cases by 2015 are a combination of an anticipated drop in new filings and a temporary increase in court resources.

For the year that started July 1, Broward County was allocated more than \$1.14 million in onetime funds for staffing. As with all of the state's 20 judicial circuits this year, the new money came from the \$25 billion na-

tional foreclosure settlement reached between the states' attorneys general and lenders accused of robo-signing.

Florida's share was \$8.4 billion, but only a small fraction is going to courts. The Legislature guaranteed funding from the settlement for the foreclosure dockets this year and next.

Kathleen Pugh, Broward's trial courts administrator, said the circuit's share would fund senior judges for 450 days, or the equivalent of three full-time judges. Two general magistrates also would be hired to handle foreclosure cases, as well as 18 case managers and six secretaries.

It takes time to get to full strength, Pugh added. The positions are being advertised now.

"We would love to be able to hire them all right now. The positions are open until filled," she said. "How soon they are filled depends on how many people apply. Hopefully, it will be sooner than later."

Pugh noted that when the circuit first got emergency funds for the foreclosure docket in July 2009, the positions were not all filled until October.



An April 10 report of the workgroup made seven recommendations:

- Reassign judges from other divisions.
- Use senior judges and general magistrates.
- Set cases for trial, limit continuances and require personal appearances by lawyers at all case management hearings.
- Contact law firms, review files for completeness and target older cases.
- Group cases by law firm to schedule block summary judgment hearings and trials.
- Identify uncontested cases suitable for expedited processing.
- Develop outreach programs.
- Use e-filing and scheduling to reduce paperwork.

In some fashion, each circuit implemented most or all of the recommendations.

"In Dade, the court will set hearings on their own for a trial even if no party does anything. They also dismiss cases if there is no activity in a year," said foreclosure defense attorney Roy Oppenheim of Oppenheim Law in Weston. "In Broward, (judges) are not dismissing cases on their own for lack of prosecution. They are setting trials rapidly but only when you come before the court. If you come before court for anything, they will hit you with a trial setting."

How trials are set is the major difference between Miami-Dade and other counties, but there is a significant difference in the use of judges. Miami-Dade spreads the foreclosure docket among all civil circuit judges. Broward and Palm Beach dedicate certain courts to handling foreclosure cases.

Miami-Dade Circuit Judge Jennifer Bailey, who administers the foreclosure docket, considers its attack on the backlog very successful.

The circuit learned from experience that nothing happened when judges left the resolution of foreclosure cases up to the lenders and homeowners.

"In all candor, they just wouldn't do it," Bailey said. "Both plaintiff and defendant were just sitting on these cases doing nothing."

Often, the homeowner's tactic was to delay an adverse final judgment as long as possible. And banks, reluctant to take on the liability of property maintenance, let sleeping dogs lie.

With courts pushing cases to trial ready or not, Oppenheim described the results as asymmetrical, with both sides suffering losses they might not have otherwise.

Ice Legal managing partner Thomas Ice of Royal Palm Beach, a defense attorney whose firm took a robo-signing case to the Florida Supreme Court, never accepted the court's premise that foreclosure cases be brought in compliance with state time standards. He said the standards never contemplated the foreclosure crisis and didn't account for cases where neither party wanted to proceed.

## HASTE = MISTAKE

A reversal July 31 and two others on July 3 by the Third District Court of Appeal highlight how rushed foreclosure trials have haunted the foreclosure process.

JPMorgan Chase won two of the reversals. In one case, the bank responded to two notices of failure to prosecute with a flurry of filings only to have the case dismissed. The appeals court considered the filings timely and revived the foreclosure.

JPMorgan won another reversal fol-

## FORECLOSURE BACKLOG



### Progress on residential foreclosure case backlog

Circuit	6/30/2012	5/31/2013	Closed	Circuit judges
Broward	45,118	41,895	20,938	12
Miami-Dade	52,211	37,611	38,697	21
Palm Beach	32,977	28,632	16,632	9

### Nonrecurring state funds for foreclosure backlog in 2013-2014

Miami-Dade	\$1,178,453	620 Senior judge days 1 Information Tech	19 Case managers 1 Secretary
Broward	\$1,142,145	450 Senior judge days 2 General magistrates	18 Case managers 6 Secretaries
Palm Beach	\$ 765,152	519 Senior judge days 1 General magistrate	13 Case managers 1 Secretary

ADOLFO PESQUERA



J. ALBERT DIAZ

Defense attorney Roy Oppenheim worries about judges being more concerned with speeding up the docket than dispensing justice.



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Circuit Judge Jennifer Bailey considers Miami-Dade's attack on the backlog very successful.



MELANIE BELL

Defense attorney Thomas Ice doesn't accept the premise that foreclosure cases must meet state time limits.



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Third District Judge Richard Suarez noted Supreme Court rules preclude dismissal if there was any filing within a 60-day grace period.



Palm Beach Circuit Judge Diana Lewis responded to the request for a six-hour foreclosure trial by saying, "If you can't do it within an hour, you're not a trial attorney."

MELANIE BELL

lowing a notice in a different case. The bank responded to the notice and its attorney appeared personally at the dismissal hearing. The Third District noted Supreme Court rules preclude dismissal if there was any filing within a 60-day grace period.

"The conditions imposed ... suggest the trial court sought to encourage active record activity and hasten resolution on the merits," Third District Judge Richard Suarez said. "The Supreme Court has expressly rejected this distinction between active and passive record activity."

Another rush-to-trial tactic was reversed in a U.S. Bank foreclosure over an "at issue" dispute. Cases are not ripe for trial until 20 days after motions on issues have been served. U.S. Bank acknowledged the homeowners' response had not reached the 20-day limit, and the bank had not waived its right to serve motions directed at her response.

Bailey considered the reversals not at all unusual given the huge number of disposed cases.

"If we close 40,000 cases, we certainly don't expect to be perfect," she said. "Is reversal higher than in a typical year? I have nothing to indicate this. I do know the circuit judges are trying to do a good job. We are consistently saying it's more important to do it right than to do it fast."

Oppenheim disagrees, noting the stark contrast between the heavily populated counties and less populated counties such as Indian River, where "we sometimes see the judges taking these cases more seriously."

He said it is not unheard of for Broward judges to conduct "three-minute trials, a notion that is an oxymoron."

"Does a judge have an inherent conflict when he or she is more concerned with the docket than with dispensing justice? These two concepts are at loggerheads. They do not necessarily rest well with one another," Oppenheim said.

## LENDER BIAS

In this quest to drain the dockets, courts have made life considerably more challenging for defense attorneys. Block trials in Palm Beach County, for example, are set in favor of the plaintiff lender so a bank needs only one lawyer in one courtroom to dispose of cases being heard at 15-minute intervals.

"Ice Legal doesn't get its own courtroom," Ice complained. "Nor does the court comply with professionalism rules that require attorneys to confer with one another as to when their schedules will permit them to attend a hearing."

Ice never accepted the court's premise that foreclosure cases be brought in compliance with state time standards. He said the standards never contemplated the foreclosure crisis and didn't account for cases where neither party wanted to proceed.

Since the Palm Beach County circuit went to block trials in the spring, defense attorneys have been running from courtroom to courtroom to cover simultaneous hearings. Referring to a Citi mortgage case against one client, Ice produced the transcript of a request for a six-hour trial to allow time to cross-examine a bank witness.

"You're not getting six hours. Just put that out of your head, OK?" Palm Beach Circuit Judge Diana Lewis told Ice Legal associate Arielle Petyan. "If you can't do it within an hour, you're not a trial attorney."

Lewis conceded no ground even after Petyan said she had another trial set the same day.

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