

Thomas Ice: Ocwen Lawyer Spoon-Fed Questions and Answers to Robo-Witnesses

[Samantha Joseph](#), *Daily Business Review*

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Thomas Ice

Melanie Bell

A Royal Palm Beach attorney alleges an attorney for embattled mortgage servicer Ocwen Financial Corp. improperly spoon-fed questions and answers to unqualified witnesses testifying in foreclosure cases against Florida homeowners.

Foreclosure defense attorney Thomas Ice said he's uncovered a script that was provided to Atlanta-based Ocwen witnesses to crush homeowner defenses and allegations of robo-witnesses by financial services sector employees who have no first-hand knowledge of mortgage details.

Ice represents St. Lucie County homeowner Thomas Rolle in foreclosure litigation brought by Deutsche Bank National Trust Co.

Ocwen took over servicing the mortgage in early 2013, and the lenders initially brought in national law firm Quintairos Prieto Wood & Boyer to handle the litigation.

Attorneys for both sides exchanged exhibits during trial preparation, but Ice said a group of documents inadvertently

emailed during the exchange exposed an in-house strategy to feed witnesses a list of prepared questions and answers.

In several documents, former Quintairos Prieto Wood & Boyer attorney Erin Prete outlined litigation tactics in a series of emails to colleagues addressing foreclosure defenses and strategies for debunking them. In one email thread, she provided a list of questions focused on default notices sent to homeowners to begin the foreclosure process.

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Those notices have proven pesky for lenders, who have repeatedly been tripped up in court by sloppy paperwork, incorrect mailing addresses and other administrative slipups during mortgage transfers, giving homeowners handy defenses at trial.

In addition to questions on default notices, Prete provided answers and a witness preparation form, which Ice said "provides all the documents that will be exhibits at trial to the witness."

"This is the exact opposite of the relationship that they pretend to have in the courtroom—that the witness is the records custodian who culled through the bank's records and provided the relevant ones to the attorney," Ice said.

Prete, who left Quintairos Prieto to join Gasdick Stanton Early in Orlando, did not respond to requests for comment by deadline. Her emails to other attorneys indicate an attempt to ensure testimony by Ocwen employees on mortgage transfers and so-called document boarding would overcome hearsay objections, Ice said.

Courts consider testimony from servicers describing mortgage transfer documents to be hearsay unless servicer employees testify to a fact-checking process to verify the information in the documents.

"I have been working with Ocwen on ensuring their witnesses have the information necessary to testify to the boarding process at Ocwen. I received confirmation today that the witnesses have been provided this information," Prete wrote in a Nov. 26, 2013, email to several attorneys. "As a reminder, I have attached case law and sample trial questions to ask for all prior servicer business records that we may need the witness to testify to. Please feel free to use these questions or create your own based off the case law requirements. I have also attached prior emails I have sent on this topic for anyone who didn't receive them before."

Among the questions:

- Is this boarding process routinely followed by Ocwen? Yes.
- Do you have any reason to believe the information provided by the prior servicer is not trustworthy? No.
- Are these records made at or around the time the event occurred by a person with knowledge? Yes.

"My conclusion is that it's pretty clear—from what she's saying and the document that she attaches—that they've been doing what I've been saying they were doing all along: telling clients what to say," Ice said. "These are listed out for the attorneys to ask the witness, and the answers that the witness needs to give are right there. I find that to be extremely telling. It's exactly what we thought was going on. When they talk about training of the witness, they're teaching them what to say at trial, and it doesn't matter whether it's true or not."

The allegation is the latest against Ocwen, which reached a \$150 million settlement with New York state regulators over accusations of improper servicing practices, levying excessive charges on distressed borrowers through affiliated companies and failing to maintain adequate systems to service billions of dollars' worth of mortgages.

Former Ocwen chairman William Erbey stepped down as part of the settlement that followed a New York Department of Financial Services investigation.

Under the terms of the settlement, Ocwen paid a civil monetary penalty of \$100 million to New York financial regulators and \$50 million in restitution to current and former New York borrowers who faced Ocwen foreclosure actions from 2009 to 2014.

Thin Line

Attorneys not involved in the litigation say there's a thin line between witness preparation and unethical coaching, especially when trying to establish the foundation for business records to be admitted into evidence as an exception to the hearsay rule.

"I do not feel it is appropriate for any attorney in any case to sit down with a client and give them a canned answer," said Kelly Kronenberg partner Adam Barnett.

"The act of witness preparation is leveling the playing field so that the witness can tell what he or she knows against a skilled professional who is trained to turn every careless word to his or her client's advantage," said Fort Lauderdale attorney Thomas Messana of Messana P.A. "Testimony is not a conversation. It is a highly stylized, precise question-and-answer format in a strange language and very unnatural setting—all very different from everyday life."

Messana saw no unethical behavior if Prete listened to the client representative's rendition of the facts before trial, prepared a script based on her understanding of that statement and then sent it to the witness for confirmation.

"Now if the lawyer, never having met with the client representative, prepared a script of suggested testimony, that is a big problem," he said.

Ice alleges it was the latter and Prete prepared a go-to list of questions with broad applications.

Ice has not filed a Florida Bar complaint against Prete but questioned her performance.

"My concern at the moment is not the attorney's conduct, but how this conduct, which is really the bank's conduct, is disrupting the ordinary judicial process," he said. "These witnesses are not qualified to testify. They should not be allowed to put these records into evidence. They are being told by these attorneys what to say in answer to these questions."

Ice said he discovered the documents earlier this year. He said he has discussed them with Quintairos Prieto Wood & Boyer attorneys, who are no longer handling the litigation, and the current opposing counsel in the Rolle case, Clarfield Okon Salomone & Pincus, to ensure the inadvertent email disclosures contained no privileged client information.

The litigation is ongoing, and a trial is scheduled for Friday.

Samantha Joseph can be reached at 954-468-2614.

 **HIDE COMMENTS (1)**

What's being said

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Quintairos, Prieto, Wood & Boyer, P.A.

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Quintairos, Prieto, Wood & Boyer, P.A. (QPWB) has done nothing wrong. It is unfortunate that Thomas Ice has taken information which he knew was protected by the attorney-client and/or work product privileges and attempted to improperly use such information to his advantage. QPWB is diligent about staying on top of recent case developments and proactively keeps its attorneys and clients up-to-date on such changes. Foreclosure law is an ever-changing practice area and our firm takes pride in making sure its attorneys and clients are current on the law. Mr. Ices use of privileged work-product documents stretches the bounds of ethical behavior. For any questions relating to this matter, please feel free to contact us at fs@qpwbllaw.com.

