

Minutes
Bench-Bar Foreclosure "Committee" Subcommittee

February 14, 2008

The "Committee" subcommittee met in the Superior Court Operations conference room 4 B located at 225 Spring Street, Wethersfield, CT on Thursday, February 14, 2008.

In Attendance: Judge Salvatore C. Agati (Chair), Judge Samuel Freed, Attorney Jessica L. Braus, Attorney Robert F. Frankel, Attorney Edward P. Jurkiewicz, Attorney Leanne M. Larson, and Attorney Thomas W. Witherspoon

The Chair, Judge Agati, called the first meeting of the "Committee" subcommittee to order at 2:10 p.m. Judge Agati welcomed members and explained that the purpose of this initial meeting was to gather ideas and to identify areas for improvement in the Committee process. These topics would then be more fully explored at future meetings.

1. Attorney Frankel suggested that more fillable forms would assist in providing uniform practices statewide; he distributed a document entitled "Suggested New Fillable Forms" listing 8 forms for inclusion.

2. Attorney Braus raised the issue of a flat rate fee for the Committee. She indicated that the Committee could submit a request for additional fees if a specific case warranted it. Members discussed this issue, including the range of fees, the lack of objections to "excessive" fees, and the pros and cons of establishing a flat rate fee. Judge Agati asked members to think about this issue. Attorney Frankel suggested conducting a survey of the courts as to Committees' fees. Judge Agati indicated that he would contact Judge Mintz to survey the foreclosure judges on only completed sales.

3. Another problem area identified by Attorney Braus was that at times the Committee could not be reached to obtain updated fees and costs. She indicated that this situation could result in overpayment by the plaintiff on a fax bid.

Judge Freed indicated that the Court should be informed and that the Court would contact the Committee. Judge Agati suggested a requirement that the Committee provide the updated fees and costs 48 hours before the sale. Attorney Braus inquired as to what would happen if the Committee didn't comply.

Attorney Frankel suggested adding a sentence to the standing order that the Committee has to provide plaintiff's counsel with the fees and expenses to date of request and include anticipated fees and costs. Attorney Frankel initially drafted proposed language and presented it to the group; however, he later noted that modification would be necessary to accommodate problems which might arise on the eve of a sale such as the discovery that there would be no payoff by the owner of the equity. Attorney Larson mentioned that the fees can't be collected if they are not provided and further noted that fees and costs are needed for a payoff. Attorney Frankel indicated that a perspective

homeowner by statute has 10 days to get the payoff from the lender. He further indicated that there is no time limit set by statute to refinance. Judge Agati questioned whether they were looking for reinstatement and payoff fees. The discussion continued and members elaborated on the financial aspects and consequences of the problem. The discussion also focused on the burden of obtaining a release of IRS tax liens and further who should assume this task.

As to issues such as "excessive" fees and the Committee not being responsive to a lender, Attorney Frankel suggested: 1) looking at the appointment process, and 2) training. Judge Freed provided a brief overview on the development of the current appointment process.

4. Attorney Witherspoon inquired as to why the Committee shouldn't be allowed to inform other buyers of the fax bid. He explained that the Federal Housing Administration (FHA) always bids the full debt – so why waste the other person's time? Members discussed the possibility of a waiver by the plaintiff and whether a rule was necessary. Atty. Braus suggested that language authorizing the Committee to disclose a bid be added to the fax bid form. Judge Agati indicated that this idea should be pursued.

5. Attorney Witherspoon raised the posting of the sign at the premises as an issue for discussion. Members discussed the problem of signs disappearing after posting. Attorney Larson advocated for doing away with the posting of a second sign and removing this requirement from the standing order.

Judge Agati indicated that he received an e-mail from Attorney Keith Fuller containing suggestions as follows: continued use of the sign on the premise, ads on the website, requirements that the Committee go to court and review the file, adherence to standing orders - some courts require Committee to appear to seek approval of sale, others "take the papers", and the posting of law days and sale dates on the Civil/Family computer system (The Hartford Judicial District enters these dates on the party screen.).

6. Another issue for consideration was the *Foreclosure Worksheet* form, JD-CV-77. It was suggested that a change be made to the following requirement: the appraisal report must be dated within 90 days of the date of judgment. It should reflect "dated within 6 months of the date of judgment". Attorney Larson suggested that an appraisal not be required if the government is involved.

7. An issue provided to the group by an attorney in his role as the Committee was directed to who should file the Motion for Possession; i.e. plaintiff or Committee. This attorney felt that the Committee shouldn't file as they were not an advocate for the plaintiff or the defendant. Attorney Witherspoon noted that the possession issue arises too far down the road during the supplemental judgment process. After discussion, Judge Agati indicated that the standing order should include language regarding the Motion for Possession to be filed by the Committee.

8. The time frame for the plaintiff to send out the Court-ordered letter to the nonappearing defendant owner(s) of the equity in the standing order was raised. Attorney Braus suggested that maybe it should be changed to 60 days prior to the sale; a discussion ensued.

Judge Agati mentioned choices of 7, 14, or 21 days to the group and directed members to Attorney Frankel's standing order proposal, item 2. Members discussed the possibility of eliminating the letter and adding language to a fillable standard notice of judgment form.

An item for inclusion on the next meeting's agenda should be a presentation on the Tolland computer application for foreclosure notices.

9. Attorney Larson raised the question of whether the Bond for Deed could be waived if the plaintiff was the successful bidder. Members discussed the Bond for Deed and Judge Agati suggested that a uniform Bond for Deed be created based upon whoever was the successful bidder. Attorney Jurkiewicz agreed that standardized language was beneficial.

10. The next subject members focused on was whether the Committee should inform parties of the title search. The discussion lead to the decision that the fact that the Committee has procured a title search should be disclosed since the Committee is working for the Court but should include a disclaimer. Attorney Frankel indicated that he informs Committee students to begin and end statements referencing title searches with language to the affect "you can not rely on any statement I make as true, a title search has been done but you can not rely on it being accurate." He further indicated that he suggests to them that they tape this message.

11. The last topic discussed was the payment of the Committee. Attorney Larson questioned as to the time period for payment; she noted Judge Freed says within 3 weeks of the sale. Attorney Witherspoon noted difficulties that arise if payment can't be made within 30 days. He indicated that sometimes the closing date is extended to accommodate him receiving the money from his company. Attorney Jurkiewicz noted that vendors won't go beyond the 30 days and that the Committee has advanced the fees. Specific situations were relayed.

The meeting was adjourned at 5:05 p.m.

(The date, time and location of the next meeting will be announced at a later date.)