

**MINUTES OF THE  
BENCH – BAR FORECLOSURE COMMITTEE MEETING  
THURSDAY OCTOBER 6, 2011**

Handouts to Committee Members: Agenda; Draft of Minutes of July 15, 2011 meeting; Statistics on FMP; copies of Affidavit Federal Loss Mitigation Programs – subcommittee's proposed revised versions; proposed draft of Uniform Foreclosure Mediation Standing Orders.

Members in attendance: Hon. Douglas C. Mintz, Chair, Hon. James Abrams, Hon. Salvatore Agati, Attorney Adam L. Bendett, Attorney Jessica L. Braus, Attorney Thomas Farrell, Attorney Robert F. Frankel, Attorney Jeffrey S. Gentes, Attorney Peggy George, Attorney Robin Golden, Hon. Lisa Morgan Kelly, Attorney Leanne M. Larson, Attorney Richard M. Leibert, Attorney Sarah Poriss, Attorney Gary P. Sklaver, Attorney Louis C. Zowine.

The Hon. Douglas C. Mintz, Chair called the meeting to order at 2:00 PM. New members were welcomed.

1. Approval of Minutes of July 15, 2011 Meeting - Motion to approve the minutes of the July 15, 2011 meeting was made and the minutes were approved.
2. Foreclosure Mediation Program update – Roberta Palmer updated the members with regard to the Foreclosure Mediation Program in the court and provided the members with statistical information summaries.
3. Subcommittee Report - Federal Loss Mitigation Affidavit – Attorney Bendett reported that the subcommittee met and discussed various revisions to the Affidavit that was proposed at the last Bench-Bar Foreclosure Committee Meeting. After discussion by the subcommittee members they decided to recommend to the full committee the previous proposed version of the form because it was more specific. A few additional changes were recommended to that proposed version: after docket number, add “if assigned”; after return date, add “if assigned”, remove the address box for the affiant at the top of the page; for the signature at the end, add a box to fill in the address where signed; for the notary signature at the end, remove “Clerk, Deputy Clerk, Commissioner of Superior Court”; in the opening statement for number 5, have check boxes for “is” and “is not” to be sure this section is completed. Adam also reported that there had been discussion among the subcommittee members regarding a statement indicating that a review was pending. Also, the unemployment program provision had been taken out, but now that it has been increased to 12 months, it should be determined whether appropriate to put it back in.

A motion was made to adopt the 9-2-11 4-page draft with the added suggested revisions and subject to the addition of the unemployment program. Motion was seconded.

Discussion ensued regarding how new language would be approved.

The motion was amended to delegate to the subcommittee the approval of the new language with approval thereafter by Judge Mintz.

Further discussion ensued regarding the “review pending” provision and the purpose of the form.

The motion was further amended to have the places on the form regarding “review pending” emphasized.

Committee voted: all members in attendance in favor, except Attorney Bendett and Attorney Braus.

Attorneys Bendett and Gentes to draft the new language and circulate the new draft form to the subcommittee members for approval; then to Judge Mintz for approval.

4. Draft of Revisions to Uniform Foreclosure Mediation Standing Orders –

Attorney George presented a revised draft of the Uniform Foreclosure Mediation Standing Orders which included requirements as established by PA11-201.

Members discussed whether it is necessary to include legislative requirements in standing orders.

A motion was made to table the proposed revision. Vote: all in favor.

5. Highlights of PA11-201 – Attorney George reviewed the pertinent changes to the foreclosure procedures and the mediation program promulgated by PA11-201 including a review of the forms that were developed in accordance with the legislation.

6. Discussion: should judges adjudicate disputes over attorney’s fees and costs between plaintiff and defendant once the foreclosure is commenced but before it goes to judgment? - Attorney Zowine explained circumstances surrounding cases involving large fee amounts to be paid when a defendant is seeking a reinstatement or payoff of the loan. Issue of fee amounts brought before the court; no cases on the issue. Attorney Zowine believes a court should address these matters as a court of equity.

The committee members were uncomfortable giving an opinion on this topic.

Judge Mintz suggested that the next meeting of the Committee be set for sometime after the first of the new year.

A motion was made that the meeting be adjourned. The motion was seconded and passed. Meeting adjourned at 4:00 P.M.