

MINUTES OF THE
BENCH-BAR FORECLOSURE COMMITTEE MEETING
Friday, July 25, 2014

Members in attendance: Hon. Douglas C. Mintz, Chair, Attorney Adam L. Bendett, Attorney Denis R. Caron, Attorney Robert F. Frankel, Attorney Jeffrey S. Gentes, Attorney Peggy George, Attorney Richard M. Leibert, Ms. Nancy McGann, Attorney Eugene S. Melchionne, Attorney Geoffrey Milne, Attorney Raphael L. Podolsky, Attorney Jenna N. Sternberg, Hon. Mark Taylor, Attorney Thomas C. Witherspoon, Attorney Louis C. Zowine.

Meeting was called to order at 2:10 PM.

1. Welcome and Announcements – Judge Mintz welcomed the members to the meeting.
2. Approval of Meeting Minutes of 9-12-13 – The Minutes of the September 12, 2013 meeting were unanimously approved.
3. Effect of Wells Fargo Bank, N.A. v. Melahn – Attorney Denis Caron outlined the facts of the case and the decision of the Appellate Court. He then explained that a title company has to evaluate the title to property based on the public record. In this instance, from the court file everything appears to be in order; however, if the judgment is opened, there could be a title problem. The question here is what are the consequences of non-compliance with the notice requirements set forth in the standing orders. Discussion followed which pointed out that the standing order regarding notice to non-appearing owners of the equity applies to both judgments of strict foreclosure and foreclosure by sale; therefore, any change needs to apply to both. The standing order has a purpose that needs to be considered. The Committee decided to refer this issue to the Standing Order Review Subcommittee. Attorney Caron requested that he be added as a member of that subcommittee.
4. Supplemental Judgment – Attorney George requested that the form proposed in November 2009 be considered for implementation as a judicial form for Supplemental Judgment when the plaintiff is the purchaser of property at a foreclosure sale. After some discussion the members suggested that the expenses of the plaintiff include additional items such as taxes advanced and insurance advanced. It was agreed that

a line for “Other Expenses” be added. In the motion section of the form, it was requested that the word “plaintiff” in the 4th bulleted paragraph be changed to “Committee”. It was also suggested that the order page be labeled “proposed order” because the judges now use templates in e-filing to prepare orders and would not be signing the order submitted by the plaintiff. A proposed order, however, would assist the court. The certification section would also have to be updated to reflect the current rule.

With these changes, the Committee recommended that the form be submitted for approval as a judicial form.

5. Foreclosure By Market Sale – PA 14-84 – Attorney George reviewed the provisions of this new public act which is effective January 1, 2015. The members discussed the various concerns about federal liens, junior lienholders, that foreclosure by market sale is not available at any point in the foreclosure action, who seeks payment of expenses for the buyer if a junior lienholder buys the property, and ratification of the sale.
6. Loss Mitigation Affidavit – PA 14-84 – Attorney Leibert submitted a proposed Amended Loss Mitigation Affidavit for review. Attorneys Leibert, Bendett and Gentes drafted the proposed amended affidavit to include the affidavit required by PA 14-84 regarding the notice to the mortgagor of the option of foreclosure by market sale. After a brief discussion, a motion was made and seconded that the form as amended be submitted for approval, effective January 1, 2015.
7. Mediations – Scheduling Outside of Statute – Judge Taylor asked the members if there were any concerns regarding referral of matters to the Foreclosure Mediation Program pursuant to the court’s equitable powers. The members indicated that there were no concerns.
8. Address of Property in Complaint and Appearance date for FMP on Summons – Attorney Gentes suggested that the property address could be more explicitly set out in the foreclosure complaint. Should there be a standing order for this? He also suggested that the civil summons be amended to include information about having 15 days to file an appearance for FMP matters. Discussion about the summons raised concern that adding this information to the summons could confuse parties in other civil actions, causing delays in filing a timely appearance; also, there are other forms directing mortgagors about the time-frame

within which an appearance may be filed if eligible for the Foreclosure Mediation Program.

9. Committee Fees Stayed because of Bankruptcy – Members discussed the issue of how to handle committee fees not yet approved by the court when a bankruptcy stay is in effect. Various procedures in the bankruptcy court were discussed as well. A recommendation for addition to the standing orders was made. The Committee refers this issue to the Standing Orders Review Subcommittee for further consideration.

Attorney Leibert also mentioned that there may be a need to have a standing order requiring committees for foreclosures by sale to have malpractice insurance. This issue was also referred to the Standing Orders Review Subcommittee.

Meeting adjourned at 3:53 PM