

Minutes
Bench-Bar Foreclosure Short Calendar Subcommittee

February 21, 2008

The Short Calendar subcommittee met in the Superior Court Operations Conference Room 133 located at 225 Spring Street, Wethersfield, CT on Thursday, February 21, 2008.

In Attendance: Judge Theodore R. Tyma (Chair), Attorney Adam L. Bendett, Attorney Geoffrey Kent Milne, Attorney Jessica L. Braus, Attorney Thomas J. Farrell, Attorney Leanne M. Larson, and Attorney Sarah Poriss

1. Welcome by Committee Chairperson. The Chair, Judge Tyma, welcomed the members and called the first meeting to order at 2:05 p.m. Members received a packet of materials including: Agenda, Committee Assignments (Judge Douglas C. Mintz), Short Calendar Committee (Attorney Louis C. Zowine), Letter re: Foreclosure Appraisals (Attorney John S. Bennet), Newly Adopted New Haven Foreclosure Standing Order (Tara Bartlett, New Haven JD Foreclosure Clerk), Additional Suggestions on Foreclosures (Attorney Raphael L. Podolsky), Topics for Discussion and General Observations on Differences with Court Foreclosure Procedures (Attorney Jessica L. Braus) and the Draft Order and Standing Order Versions Without Webpost Info.

2. Introduction of Members. A formal introduction of members followed Judge Tyma's welcoming remarks.

3. General Discussion of Short Calendar Issues

Judge Tyma spoke of the hope to accomplish uniformity of short calendar practices for foreclosures actions throughout the State. He suggested that the group participate in a planning activity to facilitate the process of identifying issues and problem areas. Members provided topics and later categorized them as follows: Standing Orders, Uniformity, Notice Procedures/Non-appearing Defendants, Days of Short Calendar, Experience of Judge, Committee Motions, Fees, Foreclosure by Sale/Appraisal, Marking Procedures, and Standardization Procedures for Cases Involving Bankruptcy. Judge Tyma thanked everyone for participating and indicated that with further exploration the subcommittee would have a plan by the end of the meeting.

The first item discussed was the availability of pro bono legal assistance. It was suggested that information provided on the State of Connecticut, Department of Banking website be provided in a pamphlet and distributed at the Court Service Centers. Attorney Larson suggested that it be sent to litigants by the Court early in the process prior to short calendar. Another member informed the group that the Process subcommittee was suggesting the development of a form which

would be attached to the complaint; this information could be included on that form. Other means of disseminating this information included the display of posters in each courthouse and language provided in the Notice section of the short calendar.

Another topic of discussion was appraisals. Attorney Larson indicated that the requirement pertaining to the age of the appraisal should be changed to 6 months rather than 90 days. Attorney Milne raised the questions of whether 6 months was too long and how frequently did they need to be done. Attorney Braus mentioned that if the United States government was involved, there was no need for an appraisal. Attorney Larson felt that it would be still be needed initially to set the deposit for the sale. Attorney Braus responded that couldn't the appraisal at the time the property was bought be used and noted that most foreclosures are recent to purchase. Attorney Larson and Attorney Bendett agreed on 6 months. Attorney Braus suggested within a reasonable period of time unless challenged. Attorney Farrell suggested 6 months for the initial one and then at the Court's discretion.

4. Review of Written Comments Concerning Short Calendar Received by the Subcommittee. The first item addressed was a letter from Attorney John Bennet of Gould, Larson, Bennet, Wells & McDonnell, P.C. to the Honorable Julia Aurigemma pertaining to Court appointed appraisers in foreclosure actions, particularly involving commercial real estate due to the expense of a new appraisal. Attorney Bennet indicated the Court should appoint a "disinterested appraiser" (C.G.S. § 49-25) and questioned whether the plaintiff's appraiser could do a review appraisal. A member mentioned that there was an Appellate Court case, RIDGEFIELD BANK v. STONES TRAIL, LLC, which was relevant to this issue.

The next items of discussion were some of the issues raised in a letter from Attorney Braus of Glass & Braus. Attorney Braus inquired as to what is properly included and what is not as part of the Affidavit of Debt. She questioned whether property inspections were allowed. Attorney Bendett noted that they are required by Housing and Urban Development (HUD). Attorney Farrell raised the issue of Broker Price Opinions (BPO) and the standing orders. He offered an Ohio Bankruptcy case as an example as to why he felt the Judge has to have discretion regarding whether it's allowable. A discussion ensued. Judge Tyma indicated that he didn't think it should be part of the standing orders.

Another discussion focused on whether a condo association should be required to give certified notice to first and second mortgage holders; it was decided that this matter was an issue of discretion and that it was not a matter for this subcommittee.

The next item discussed was attorney fees and the fact that some judges require affidavits and others do not. The pros and cons of standardization were

addressed in regard to simple foreclosures and commercial property foreclosures and included discussion on rate structures based upon the type of foreclosure (strict or sale), an hourly rate scale and the setting of a dollar amount not to exceed a specific amount for simple foreclosures. After conclusion of this discussion, Judge Tyma indicated that he didn't think the group should pursue this issue further.

Judge Tyma asked that someone assist him in reviewing the drafts, including Attorney Frankel's proposal and the Danbury form in order to finalize the standing orders. Attorney Bendett noted item 2 of Attorney Frankel's proposal regarding the 10 days to send notice of judgment and mentioned that it should be consistent statewide. Attorney Braus and Larson indicated that a suggestion presented in the "Committee" subcommittee was to have a standard form available.

Attorney Milne raised the issue of the entry of defaults at judgment hearing and noted the case, CHASE MANHATTAN MORTGAGE CORP. v. BURTON. A member mentioned that the New London Judicial District has language addressing defaults at the time of judgment and provides compliance requirements in order for the motion to be granted. Judge Tyma suggested that rather than include this issue in the standing orders that pertinent cases should be distributed to the judges.

Attorney Milne identified another issue as the Motion to Open when it is filed on the law day and there is no notice to plaintiff's counsel; he suggested an ex parte notice procedure. In the course of discussion, it was noted that in addition to certifying to plaintiff's counsel that a reasonable effort to contact plaintiff's counsel should be required. Postponement was also discussed. Attorney Farrell suggested using the ex parte TRO standard of substantial and reparable harm as the measure. Attorney Milne indicated that he would send an e-mail to the Process subcommittee on this issue. Attorney Larson indicated that it should be notice and consent for law days that are further away; the matter shouldn't be a write-in.

Attorney Bendett mentioned that in the case of a repayment plan, some courts put the case on hold while others require a withdrawal. Attorney Bendett will forward a proposal for the Rules Committee to Judge Hiller. Attorney Farrell will check with Robert Willock, First Assistant Clerk, as to Bridgeport procedures so that language can be included in either the standing orders or in the Notice section of the short calendar.

An additional item presented by Attorney Bendett was whether the day of short calendar should be changed.

Attorney Farrell referenced the e-mail (dated January 10) from Tara Bartlett, New Haven JD Foreclosure Clerk, to Judge Mintz and proposed the imposition of

sanctions as a solution to the notice of judgment not being sent on time. Judge Tyma asked members to consider this issue and whether it should be included in the standing orders. He indicated that language could focus on no sale will be approved or funds disbursed without proof of service in accordance with P.B. Sec. 10-14 and strict compliance with Sec. 17-22.

5. New Business. In conclusion, Judge Tyma assigned the following topics to members:

Bulletins – Attorney Farrell and Attorney Larson

Appraisals – Attorney Braus and Attorney Poriss

Standing Orders – Judge Tyma and Attorney Milne

Motion to Open and Affidavit of Debt – Attorney Bendett and Attorney Larson

Stay Due to Loss Mitigation and Settlement/Withdrawal Issue – Attorney Farrell and Attorney Bendett

The meeting was adjourned at 4:05 p.m.

The next meeting will be held at Superior Court Operations, Conference Room 133, located at 225 Spring Street, Wethersfield, CT on Thursday, April 10, 2008 at 2:00 p.m.