

Florida judges fulfill their proper role in foreclosure crisis

By **J. Thomas McGrady**

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Use of media-generated terms such as “robo-judges” and “rocket dockets” create misconceptions about how mortgage foreclosure cases are being handled in Florida courts. At worse, some of the coverage – particularly in the national media – perpetuates misunderstanding, indicates a misinterpretation of the process and shows a lack of respect for judges, staffs of the courts and clerks, and legislators, all of whom are working to solve a tremendous problem.

In addition, articles and editorials about the openness of summary judgment hearings have created an impression that the courts are trying to hide foreclosure cases from the public. Nothing is further from the truth.

A summary judgment hearing is not a “rocket docket.” The summary judgment rule is a long-standing Rule of Civil Procedure and applies to all civil cases. The function of summary judgment is to have an efficient procedure for the prompt resolution of cases when there is no genuine issue of material fact and when the party seeking the summary judgment is entitled to a judgment as a matter of law.



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A summary judgment hearing cannot be held until the defendant has been given notice of the lawsuit and given an opportunity to respond. The defendant has an opportunity to use the discovery process to obtain information from the other side and otherwise prepare his or her case. The summary judgment hearing is usually held months or years after the lawsuit is filed. When homeowners are served with a foreclosure lawsuit, they are given a notice from the court with information about mediation programs, legal services, and housing counseling services. They also are informed of their responsibility to respond to the lawsuit and informed that if they do not respond a judgment may be entered.

Summary judgment hearings in foreclosure cases are usually heard on a mass calendar. This is no different than many other proceedings and is a more efficient method to schedule limited court time. Some cases on the calendar are settled or rescheduled. In most foreclosure cases, the borrower does not appear at the summary judgment hearing. If a defendant – or their attorney – does appear, they can fully participate in the summary judgment hearing.

The role of the judge in the summary judgment hearing is limited because the judge must remain impartial and be fair to both sides. Some judges have been faulted for not going behind the paperwork that was submitted for a summary judgment. Some critics have used the term “robo-judge,” which is derogatory, offensive and misleading because the judge is constrained by the rule of law and the Code of Judicial Conduct.

Unless the defendant raises a disputed issue of material fact, the court **must** grant the motion for summary judgment. A judge **cannot** independently investigate the facts of a case, go beyond what is presented in pleadings, or become an advocate for one side or the other. Nor can the judge rely upon newspaper articles to make rulings. It is the homeowner's responsibility to raise legally sufficient defenses in his or her case.

Typically, no one is happy when the facts show the homeowner obtained a loan and can no longer pay in accordance with the terms of their agreement. If the homeowner appears but does not raise a legally sufficient defense, judges follow the law and grant the summary judgment. But many judges will order the parties to mediation for an opportunity to negotiate before the house is sold.

Because so many foreclosure cases have overburdened the courts, creating backlogs and longer wait times for other civil matters, the Florida Legislature responded and provided a \$9 million appropriation from federal stimulus funds. Of that amount approximately \$6 million is for the courts and \$3 million for the clerks. The court's funds are being prudently used for the temporary employment of case managers, who prepare the files for the judges' review, and to pay senior judges for each day they hear cases.

Some media have made it sound as if unqualified judges were recruited from retirement homes solely to dispose of foreclosure cases. To the contrary, **senior judges** are fully qualified, active judges. Their purpose is to help with temporary needs of the court when judges are ill, have lengthy trials, or other unexpected situations arise. Florida's senior judges must maintain continuing judicial education and are approved by a senior judge review board. The foreclosure crisis is an unexpected situation for which senior judges are aptly suited – for what we hope is a short-term situation.

A few incidents in other parts of the state have been reported in a manner that suggests courts are purposefully barring the public and the press from summary judgment hearings. These reports have been enhanced by rumor and hearsay and because summary judgment hearings are often held in small rooms with controlled access because of a shortage of courtrooms.

I know of no situation where the parties, the press, or the public were denied access to summary judgment hearings in the Sixth Judicial Circuit . . . or most other circuits. Just the opposite is true. I encourage any member of the public to observe court proceedings. We have welcomed the media into our courtrooms and chambers for mortgage foreclosure hearings. The media has requested to and attended hearings in St. Petersburg, Clearwater, and Dade City. Sixth Judicial Circuit hearings have been attended by the local press, including the *St. Petersburg Times*, *Tampa Tribune* and most of the TV stations; the national press, including the *Wall Street Journal* and *NBC Nightly News*; the web media represented by *Bloomberg Business & Financial News*; and even international media from Canada and Switzerland. Numerous phone calls from the *New York Times* and *Washington Post* have been returned.

At every chance, the press has been encouraged to educate themselves and the public about the foreclosure process and to learn more about our judicial system. Recently, I held a meeting with attorneys for borrowers and lenders and met afterwards with the press to answer their questions

about the foreclosure process and our foreclosure mediation program. In addition, I and other judges have held numerous one-on-one sessions with individual reporters to answer their questions about processes and procedures.

It is easy for the media – particularly those geared to sound bites – to throw out catchy terms like “robo-judge” and “rocket docket.” The judge’s role is not as an advocate for the homeowner or lender. Rather the judge is a neutral referee. He or she must make decisions based on the presented evidence. Judges should be commended for upholding their oath of office and following the law.

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