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Miami Court Aims to Clear Out 52,000 Foreclosure Cases by June

Case closure goals at Miami-Dade Circuit Court worry defense attorneys

Florida's circuit courts received \$6 million and a one-year deadline to clear much of the backlog of foreclosure cases brought on by the housing crash, and Miami-Dade Circuit Court is using the funds to implement a three-tiered approach. Its \$862,053 allocation came July 1 with instructions to close out 52,000 cases by June 30, 2011, more than have ever been resolved in a year's time. Meanwhile, talk of quotas and case closure goals is enough to worry foreclosure defense attorneys.

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Florida's circuit courts received \$6 million and a one-year deadline to clear much of the backlog of foreclosure cases brought on by the housing crash, and Miami-Dade Circuit Court is using the funds to implement a three-tiered approach.

The county with the state's largest foreclosure backlog of 79,000 cases received the most funding from the Legislature, aimed at eliminating a foreclosure backlog that is choking court dockets. The \$862,053 came July 1 with instructions to close out 52,000 foreclosure cases by June 30, 2011, more than have ever been resolved in a year's time.

Circuit Judge Jennifer D. Bailey, who oversees the Miami-Dade civil division, responded to the ambitious demand by scrapping a previous plan to create a rotating foreclosure calendar for sitting circuit judges and hiring senior judges to do the work instead.

But the creation of a foreclosure master calendar heard by senior judges whose sole task is to consider summary judgments and clear dockets causes attorneys for homeowners to fear the system is biased toward lenders.

It's an accusation Bailey denies.

"We are definitely not a 'rocket docket,'" she said Thursday.

"We are working very hard to make sure that it's not just about closing these cases," she said. "It's about closing these cases and making sure the integrity of the legal process is protected."

At this time last year, timely case resolution in Miami-Dade was an impossibility. Residential foreclosures had swamped the civil division, forcing other cases to wait in line. By Bailey's count, each of the 26 civil judges handled close to 6,000 cases at a time, far beyond the usual 1,800.

The total number of cases far surpasses the 42,000 the courts were designed to handle.

Using state funds released this summer, Bailey lessened the load on circuit judges by handing older cases to senior judges. Cases filed after Jan. 1, 2009, stay with individual circuit judges.

"This completely standardizes everything. It doesn't guarantee you're going to get summary judgment, but you'll get a hearing that's going to get traction," she said.

The 15,537 cases filed before 2009 went to Section 50, a floating courtroom that changes location nearly every week to whatever empty space is available. Senior Judges Eugene Fierro, Judith Kreeger, Tom Peterson, Jeff Rosinek and Alan Schwartz take turns on the bench.

When cases are ready for a summary judgment hearing, they head to the foreclosure master calendar, which has a permanent home in Courtroom 3-3 but is also staffed by rotating senior judges.

JAMMED CALENDAR

Getting a case ready for summary judgment is no modest task. Lenders seeking to finalize foreclosure must submit packets for approval by case managers, who must ensure there are no pending motions, outstanding discovery or other unresolved issues.

A three-strikes rule prevents lenders from filing incomplete packets because, if they do, a conference meeting between court and attorneys is called.

Because senior judges and paralegals must first be trained to properly handle foreclosures, the master calendar has been operational for only six weeks with the clock ticking on the state funding. Already it has been slammed by a wave of applications, with one foreclosure firm reportedly dropping off 900 packets last week.

"We've gotten a tsunami of summary judgment motions in the last three months, so we have a delay in the review process," Bailey said.

Adding to the drag is the court's inability to fill case manager positions, which pay \$15.75 an hour and provide no benefits.

"You've got to think, with all these law students without jobs that we'd be able to fill these positions," Bailey said.

Florida's Trial Court Budget Commission assured lawmakers that courts would significantly trim the foreclosure backlog by mid-2011. For Miami-Dade, the goal was set at 52,000. Bailey said failing could cost courts credibility and hurt future funding.

But success could be quite a feat. Miami-Dade closed 13,594 cases in 2007, 25,303 in 2008 and 36,609 in 2009. This year's pace is slower: Judges have closed about 24,000 cases so far this year.

WORRIED DEFENSE ATTORNEY

Meanwhile, talk of quotas and case closure goals is enough to worry foreclosure defense attorneys like Christopher Black.

Although none of his cases has gone to summary judgment in the new court on the third floor, Black, a Miami solo practitioner, said he's uncomfortable with how the system has been created.

"It appears on its face that the task is simply to move these foreclosure cases along as fast as possible. And the fastest way to move it along is a summary judgment, which is inherently against the interests of the homeowners," he said.

Similar worries plague Rafael Recalde, another Miami solo practitioner. By his own account, he has been on the master calendar more than a dozen times. He said he often sees judges often ask how old a case is, and the older it is the more aggressively they push it. "In many cases, there will still be discovery pending or affirmative defenses," he said.

Recalde said the entire docket-clearing strategy is based on a single premise -- borrowers who lose their homes don't have the money for an appeal. He also questions the motivation of judges.

"It's almost like regular laws and rules of procedures don't apply to bank attorneys."

Boca Raton foreclosure defense attorney W. Jeff Barnes, who runs the blog ForeclosureDefenseNationwide.com, questioned a summary judgment order issued by Senior Judge Jeffrey Rosinek on Sept. 7 -- the same day Barnes received notice of the hearing.

"This procedure flies in the face of recent Florida case law, which provides that any final order entered without notice is void and subject to being vacated. As such, the Miami-Dade Circuit Court has probably served to further clog its dockets with a deluge of motions likely be filed by those who never received notice from the master calendar of a summary judgment motion," Barnes wrote last week.

Judge Jennifer Bailey, who supervises the foreclosure program, said not all criticism is valid. She noted borrowers' attorneys sometimes use discovery and other maneuvers for no other reason than to delay cases while mortgages go unpaid.

"They can't just file discovery as a stalling tactic and expect that to delay summary judgment. If they pursue the discovery in a diligent way, then that'll affect the court's consideration of summary judgment. Every individual case gets evaluated on its merit," she said.

The program cannot yet ensure a timely analysis of summary judgment packets, but Bailey insists that won't be an issue. "If that causes us to fall behind a bit, so be it. It's more important to do it right than do it fast." she said.

When asked what ensures that borrowers without attorneys will be treated fairly, Bailey argued the program was carefully designed to avoid unfair rulings and that money has gone to pay interpreters for non-English speaking defendants.

"I'm shortchanging other needs in the 11th Circuit to have an interpreter there," she said.

Not all attorneys are critics, though. Toyne & Mayo associate Michael Schimmel, who represents condominium associations against homeowners and banks, benefits from moving cases faster. Asked about Section 50, which handles older cases, Schimmel laughed.

"I'm loving that, taking all these stale cases," he said, then complimented Rosinek. "He was just jammin'. He was taking all these old cases and just ruling on it. He was getting stuff done, and it was great."

Representing condo associations means Schimmel is in the middle, first suing to foreclose due to unpaid

condo fees, and then hoping banks foreclose and start paying the fees.

Emily Newell, who represents condo associations for the Miami law office of David B. Haber, is pleased the foreclosure master calendar is now putting pressure on banks.

"They are making the banks move, especially in cases where the defendants are not taking action to speed up the foreclosure process," she said. "Now they have case management."

The master calendar also serves as what Bailey calls a one-stop shop, where clerks stationed near the judge immediately enter orders into the system.

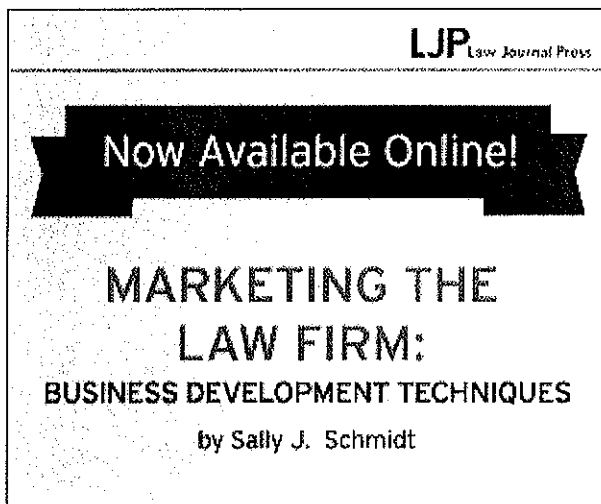
But anyone wishing to stop a sale -- and armed with a legitimate reason -- can do so at morning hearings, Bailey stresses. Court staff estimates nearly 400 sales were canceled during the first week of September.

That's something that foreclosure defense attorneys like Recalde appreciate.

Bailey acknowledges the three-tiered program is still in its infancy, which could be why attorneys like Black call the constantly moving Section 50 "the bounce house."

Coral Gables foreclosure defense attorney Dillon Graham had 10 cases transferred to Section 50 in June and will be there for his first case management hearing Wednesday.

"My hope is that while I'm fighting for homeowners, the economy recovers enough so my clients can start making their mortgage payments again," he said. "Procedures designed to rush cases through the system are not helpful. I'm worried."



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