

2012 REPORT OF THE
CHIEF ADMINISTRATOR OF THE COURTS

Pursuant to Chapter 507 of The Laws of 2009

A. GAIL PRUDENTI

Chief Administrative Judge



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PREFACE

To the Governor and the Legislature of the State of New York:

I AM PLEASED TO SUBMIT THIS REPORT on the status of foreclosure settlement conferences in the New York State Courts. Section 10-a(2) of chapter 507 of the Laws of 2009, directs that “the chief administrator of the courts shall submit a report . . . to the governor [and key legislative officials] on the adequacy and effectiveness of the settlement conferences authorized [under section 10-a (1)] . . . which shall include, but not be limited to the number of adjournments, defaults, discontinuances, dismissals, conferences held, and the number of defendants appearing with and without counsel.” Accordingly, this Report provides the required statistics and other additional information regarding residential foreclosure cases and foreclosure settlement conferences for the period April 23, 2012 to October 8, 2012.



Hon. A. Gail Prudenti
CHIEF ADMINISTRATIVE JUDGE

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I. INTRODUCTION

CURRENTLY, FORECLOSURE CASES COMPRISE more than a quarter of the court system's civil caseload. Recognizing the impact these cases have not only on the court but also on the economy, the Judiciary has made a priority of addressing the foreclosure docket. To that end, efforts have been made to refine and enhance the case information gathered and recorded in foreclosure matters to better understand and, where necessary, improve case processing. In April 2012, after studying the existing data and conferring with courts throughout the state, new data collection procedures were implemented. For this reason, this report will focus on the foreclosure data recorded from April to October 2012.

II. STATEWIDE FORECLOSURE COMMITTEE

SHORTLY AFTER THE APPOINTMENT of Chief Administrative Judge A. Gail Prudenti in December 2011, a Statewide Foreclosure Committee was created. Chaired by the Honorable Judy Harris Kluger, Chief of Policy and Planning for New York State Courts, the purpose of the committee is to study foreclosure case processing and develop pilot projects throughout the state. Comprised of state and local administrators, judges, legal and clerical staff, this group has unparalleled experience in the foreclosure arena.

With representatives from every judicial district, the committee meets every four to six weeks and acts as a statewide clearinghouse for foreclosure information and trends, district-specific programs and statewide policy initiatives. The participants share case management strategies, best practices and lessons learned from local programs. In addition, new pilot programs are discussed and evaluated by the committee. This committee's experience and expertise were key in developing and defining new data metrics for collecting information on foreclosure matters.

III. REFORMS OF DATA COLLECTION

AFTER REVIEWING DATA FROM PRIOR YEARS, it became apparent that revisions to the previous data collection process were necessary. Individual counties were using county-specific metrics which made statewide analysis and comparisons difficult. Uniform data metrics were developed which simplified and standardized the process.

In addition to statewide uniformity, these new metrics were designed to streamline data entry. Multiple web-based training sessions were conducted, training guides were distributed and technical support was and continues to be provided. The new system was implemented in April 2012 and the courts have embraced it as the streamlined process that was envisioned.

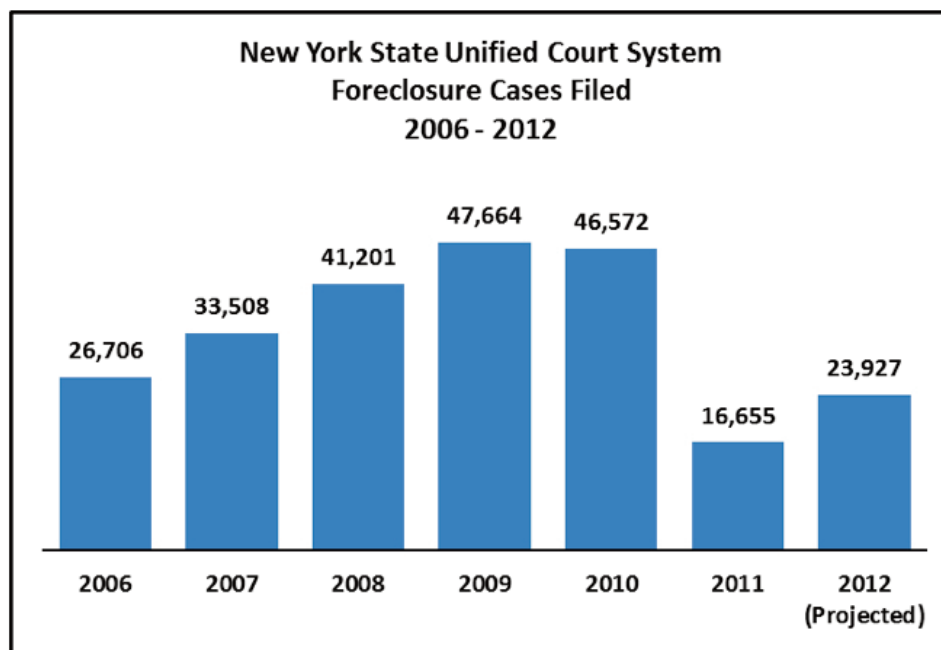
Since the data collected under the new system is in many respects different from prior years, it is not currently possible to draw comparisons. Thus, this report will focus mainly on the post-implementation period which began on April 23, 2012. In future reports, we expect to have the ability to make year-to-year comparisons.

IV. “ROBO-SIGNING” AND THE AFFIRMATION REQUIREMENT

AS DISCUSSED AT LENGTH IN THE 2011 ANNUAL REPORT, the Administrative Order requiring the filing of an affirmation by the plaintiff certifying the accuracy of court documents has continued to impact new foreclosure case filings. In October 2010, Chief Judge Jonathan Lippman instituted this filing requirement in all residential foreclosure cases to combat the practice of “robo-signing” wherein bank representatives claimed to have personally reviewed thousands of documents in impossibly short periods of time.

In foreclosure cases already pending at the time the rule was enacted, the affirmation must be filed prior to the sale of the property. In all cases filed after the effective date, the affirmation must be filed at the time a request for judicial intervention is made. The latter is one apparent reason for the significant decline in new case filings. It appears that some banks have had difficulty complying with the affirmation requirement.

Through September of this year, 16,565 new foreclosure cases were filed, 12,747 of which were residential foreclosure cases requiring a settlement conference. This is an increase from last year, however, still markedly lower than the 48,000 new cases filed in 2009.



Research suggests that plaintiffs are commencing foreclosure proceedings by filing a summons and complaint, but they are not thereafter initiating a court proceeding by filing a request for judicial intervention. The best explanation for this trend is that these plaintiffs are unable to comply with the affirmation requirement.

Given this trend, there is an inventory of thousands¹ of cases that have technically been commenced, but are not before the court. These cases are referred to as the “shadow inventory.” A pilot program designed to address these matters is underway in Kings County and will be discussed in section VII.

¹ In Kings and Queens Counties alone there are approximately 6,000 cases in this posture.

V. SETTLEMENT CONFERENCES

DESPITE THE REDUCTION IN NEW CASE FILINGS, the number of foreclosure settlement conferences remains high. Between April 23, 2012 and October 8, 2012, the court conducted 35,554 foreclosure settlement conferences. Projections are that 77,000 conferences will be held this year.

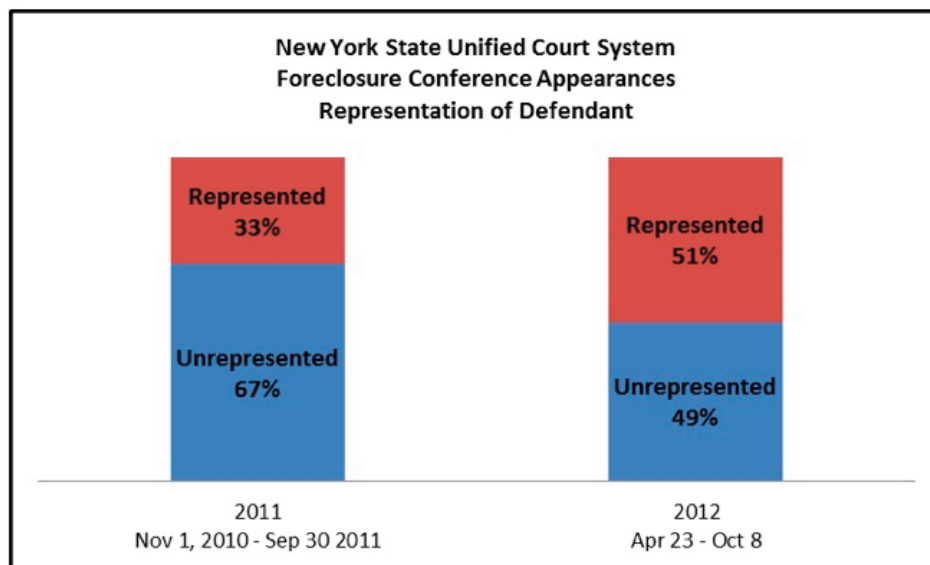
In addition to the court time necessitated by the large number of appearances, issues relating to document exchange and the absence of anyone from the bank with full decision-making authority limit the productivity of the conference. This results in unnecessary adjournments and frustration for all parties. In order to make the conferences more meaningful and constructive, the court has worked with a handful of lenders and legal services providers to devise a unique pilot that will be discussed in more detail in section VIII.

VI. REPRESENTATION

CHIEF JUDGE LIPPMAN has been a tireless advocate for a comprehensive approach to providing counsel to low-income New Yorkers in key quality-of-life civil matters. Of particular concern to the Chief Judge is representation for residential homeowners facing foreclosures. As noted in the 2011 Annual Report, only 33 percent of defendants in residential foreclosure cases were represented at their settlement conferences.

In the past year, the Judiciary has undertaken significant efforts to increase the availability of counsel to homeowners who are unable to afford representation. Legal services providers, volunteer lawyers, law school clinics and housing counselors have worked with the courts in each judicial district to provide representation at these conferences.

Based on these efforts and the civil legal service funding that the Judiciary sought and secured, including \$25 million for civil legal services in the 2012-2013 Judiciary Budget, over 51 percent of defendants appearing at foreclosure settlement conferences since the new case reporting protocol took effect in April 2012 had representatives present to advise them at this critical stage in the proceedings. This is a marked increase from prior years.



VII. SHADOW INVENTORY PILOT

AS DESCRIBED IN SECTION IV, thousands of residential foreclosure cases have been commenced with the filing and service of a summons and complaint, but are not before the court. As a result, the litigants cannot avail themselves of the mandated foreclosure settlement conference which is only scheduled when a request for judicial intervention is made.

To address this shadow inventory of cases, in June 2012 Chief Administrative Judge Prudenti, with the advice and consent of the Administrative Board of the Courts, amended the Uniform Civil Rules of the Supreme and County Courts by adding a new section 202.12-a (b)(3) authorizing special calendars for certain residential foreclosure actions (See Appendix B). In effect, the administrative order authorizes courts to schedule foreclosure cases even though a request for judicial intervention has not been filed.

Working with the County Clerk to identify over 3,000 cases in their shadow inventory, Kings County Supreme Court began a pilot program in June 2012. Though no request for judicial intervention has been filed, homeowner-defendants are notified to appear in court for a status conference. Legal service providers and housing counselors are present to confer with each homeowner who appears. Eligible cases where the homeowners wish to proceed are scheduled for a foreclosure settlement conference with the plaintiff lending institution.

Early reports indicate that the shadow inventory pilot is a productive effort - getting homeowners to the foreclosure settlement conference earlier, when settlement is still a viable option. Currently, several other courts are planning shadow inventory parts in their counties.

VIII. SERVICER PILOT

AS HAS BEEN STATED EARLIER, issues exist at the foreclosure settlement conference relating to document exchange and the absence of authorized bank representatives. Homeowner documents often become stale and efforts to cure the staleness of one results in the aging of another. This cycle of document churning causes unnecessary and unproductive adjournments and delays any potential resolution of the case.

In May 2012, Queens County Supreme Court began a program designed to make conferences more productive. A completed set of documents, compiled by court staff, is sent to a specified bank representative. A conference is then scheduled where an underwriter from the servicer bank with authority to settle and the homeowner and counsel meet to discuss foreclosure alternatives. Each servicer's cases are scheduled for a specific day to maximize efficiency and make the process less labor intensive.

Other counties are experimenting with this pilot and, in the coming months, efficacy of the program will be evaluated.

IX. FORECLOSURE SETTLEMENT CONFERENCE STATISTICS

AS EXPLAINED IN SECTION III, all statistics are reported from April 23, 2012 (the first day of the court term in which the new data collection metrics were implemented) through October 8, 2012 (the date concluding the last full term prior to this report) (See Appendix A).

- **Conferences Held** There were 35,554 conferences held in the reporting period referenced. As mentioned earlier, despite the decrease in new case filings, the number of conferences being conducted is still high and resource intensive.
- **Adjournments** There were 24,316 adjournments of settlement conferences statewide. While each case requires comprehensive attention throughout the conferencing phase, local administrative directives have been implemented to avoid unnecessary and lengthy adjournments. In addition, the servicer pilot is designed to make each appearance meaningful and productive, requiring fewer adjournments.
- **Defaults** There were 2,479 defaults recorded during the reporting period. In an effort to ensure defendant participation in court proceedings, several courts have engaged in public outreach to encourage homeowners facing foreclosure to appear and assure them that the court process is fair and impartial.
- **Discontinuances** During this reporting period 646 cases were discontinued by stipulation on consent of the litigants.
- **Dismissals** There were 528 dismissals reported during this period.
- **Representation** As noted in section VI, there has been a significant increase in the percentage of litigants represented at each conference appearance. In the most recent budgetary period, the Chief Judge secured \$25 million for civil legal services providers to represent the most vulnerable New Yorkers. Homeowners facing foreclosure are among those in greatest need of counsel. Since April, more than 51 percent of homeowners had an attorney, a supervised law school clinic student or a housing counselor present at their conference.

X. CONCLUSION

AT 27 PERCENT OF ALL PENDING supreme court civil cases, foreclosure actions continue to represent a significant percentage of the court's caseload.

Through the efforts of our Statewide Foreclosure Committee and staff from around the state, more is known about the foreclosure inventory than ever before. That information will help the courts better manage these cases and continue to test new methods to increase efficiency and productivity not only at the conference phase, but throughout the pendency of the case.

Despite a scarcity of resources, the court is committed to affording all defendants court-supervised settlement conferences with representation present. Though there has been a decrease in new foreclosure filings over the past few years, the number of settlement conferences remains steady. But, as the thousands of cases in the shadow inventory enter the settlement conference parts, the number of conferences and attendant workload will increase.

In the past year, improvements have been made in data collection, data analysis, representation and scheduling earlier and more productive conferences, but more work remains to be done. The courts will be informed by the progress of the pilot programs, and the work done with partners in government, bar groups, the financial industry and civil legal services providers. As always, we strive to utilize our limited resources to bring these cases to a just and fair resolution.

APPENDIX A

NEW YORK STATE UNIFIED COURT SYSTEM **SUMMARY TABLE**

April 23, 2012 – October 8, 2012

| | |
|---------------------------------------|--------|
| Conferences Held | 35,554 |
| Number of Adjournments | 24,316 |
| Defaults | 2,479 |
| Discontinuances | 646 |
| Dismissals | 528 |
| Defendants Appearing with Counsel* | 16,685 |
| Defendants Appearing without Counsel* | 15,753 |

*Based upon the 35,554 conferences held between April 23 and October 8, 2012, excluding appearances where the defendant defaulted.

APPENDIX B

ADMINISTRATIVE ORDER OF THE CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend the Uniform Civil Rules of the Supreme and County Courts by adding a new section 202.12-a(b)(3), relating to special calendars for certain residential foreclosure actions, effective immediately for purposes of a pilot project only, to read as follows:

* * *

(b)(3) In such county or counties as the Chief Administrator shall direct, in the event that a plaintiff fails to file proof of service of the summons and complaint in a residential mortgage foreclosure action with the county clerk within one hundred twenty days after the commencement of the action, or fails to file the RJJ at the time of the filing of proof of service, the county clerk shall provide the Chief Administrative Judge with the case name, index number, property address, and contact information of parties and counsel in the action. The Chief Administrator may take such further action as she deems fit with respect to such case or cases, including but not limited to (a) placing a case on a delinquency calendar; (b) providing case information to a housing counseling agency or agencies; and (c) ordering a status conference.



Chief Administrative Judge of the Courts

Dated: June 18, 2012

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