

Legal Services for the Elderly in Queens



October 31, 2016

rulecomments@nycourts.gov

John W. McConnell, Esq.
Counsel, Office of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004

Re: Proposed Uniform Forms for Use in Residential Foreclosure Proceedings

Dear Mr. McConnell:

JASA/Legal Services for the Elderly in Queens (JASA/LSEQ) respectfully submits the following comments concerning the proposed uniform "Foreclosure Settlement Conference Intake Form" (the "Intake Form") and "Foreclosure Settlement Conference Status Form" (the "Status Form") for use in residential foreclosure proceedings. We thank the Office of Court Administration (OCA) for providing this opportunity to comment on the proposed forms and have set forth below several comments and suggested improvements to these proposed forms.

We greatly appreciate the leadership of Honorable Sherry Klein Heitler and the Office of Policy and Planning in developing statewide forms in order to provide clear, uniform and accurate recordings of the proceedings for both litigants and the courts. JASA/LSEQ believes that it is especially critical for unrepresented older homeowners who are attempting to navigate the judicial foreclosure process to understand their rights and responsibilities and receive accurate, clear information about their conferences and a record of the directives issued by the court personnel presiding over the conferences.

JASA/LSEQ provides legal representation to those older adults (over age 60) with the "greatest social and economic needs." Our office provides free legal representation throughout Queens County to low income seniors facing eviction and foreclosures, termination of their public benefits including SSI, public assistance, Medicaid and Food Stamps. We also provide legal assistance to individuals being abused through project LEAP. LEAP is an elder abuse prevention project comprised of attorney and social worker teams. LEAP operates throughout Brooklyn, Queens and Manhattan. LEAP assists senior citizens who are victims of abuse by

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Funded under contracts with the NYC Department for the Aging as part of the Older Americans Act Program, the New York State Attorney General Homeownership Protection Program and the Unified Court System

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providing comprehensive case management and legal services, including representing seniors who are the victims of predatory lending, foreclosure rescue and home improvement scams.

Preliminarily, we note that these forms were apparently in development prior to the enactment of Part Q of Chapter 73 of the Laws of New York 2016 ("Part Q"), and therefore do not reflect the substantial changes in the landscape effected by the substantial recent amendments to CPLR 3408, which become effective on December 20, 2016. We therefore respectfully suggest that these forms be revised in order to reflect the current state of the law, as detailed below.

Comments on Layout and General Content

Layout. Both forms are intended to enable thorough and accurate documentation of the circumstances of the case and progress from one conference to the next. The resulting record will both inform the parties and enable judges and court personnel to maximize the effectiveness of each conference. The volume of information to be recorded on the forms, however, evidently cannot be made to fit comfortably on one page; the effort to do so results in small font size and cramped spacing, as well as limited space for written referee comments. Senior homeowners and others with vision problems will find it difficult to read and understand the printed form and handwritten notations to be entered in the small spaces. The completed forms will necessarily include critical information—including adjournment dates and other deadlines—that should be large enough to read. On the current version of the forms, the adjournment date and time are to be entered on short lines in the last sentence in a series of outcomes and court codes. We believe that two-page forms will facilitate clearer information for both court personnel and the litigants.

Readability may also be improved if the court's internal disposition codes are not included on the forms. The codes are incomprehensible to non-court personnel, so perhaps a separate glossary, legend, or instruction page could be created for court personnel to use for entering information in court systems.

Forms in electronic format. We understand that court personnel will be able to use these forms either pre-printed in triplicate or as computer-based fillable PDF forms. We urge that, to the extent possible, the forms be filled out electronically on fillable PDF forms. This will make the completed forms more legible for the parties and court personnel alike, will make the completed forms more accessible and more easily searchable for relevant information, and will make it easier for these documents be made part of the court record in redacted form.

Having the forms in electronic format will also make it easier for the OCA to collect data about the settlement conference process. We hope that OCA will collect and begin to analyze the uniform information and data that will now be tracked at settlement conferences in an effort to

improve the foreclosure settlement process and provide better access to justice for all New Yorkers.

Appearances. Both forms include a box in which parties' appearances are to be entered. The current versions do not include a space for a notation to indicate whether the attorney appearing on behalf of plaintiff is a *per diem* counsel or plaintiff's retained counsel—information that is particularly important in the context of residential foreclosure proceedings. For defendant's appearance, rather than the selection "of counsel" (a potentially misleading term, as attorneys are often identified as "of counsel" to their legal services or law offices), JASA/LSEQ suggests that available options include "retained," "limited representation," and "attorney for the day." We further suggest that for defendants who are unrepresented, a check-box be added to the form to indicate whether the defendant has been given a list of free legal services providers and housing counseling services available in their geographic area.

In addition, in light of the explicit statutory requirement to appear with authority to settle (CPLR 3408 (c)), both the intake and status forms should have a means of recording whether the individuals and counsel appearing at the conference complied with this statutory requirement. This is especially important in light of the recent amendments to CPLR 3408, which enumerate appearance with authority pursuant to CPLR 3408(c) as one of the indicia of good faith participation in settlement conferences pursuant to CPLR 3408(f).

Intake Form

New legal protections. Consistent with Part Q, it is important that the Intake Form indicate whether the homeowner received a copy of the Consumer Bill of Rights and information about free local legal resources providing assistance with *pro se* answers, whether the new 90-day notice was served, whether the homeowner has answered, and if not, indicating vacatur of the default and providing the date the homeowner must serve answering papers.

Eligibility. The Intake Form includes three possible boxes to check in response a question regarding eligibility for settlement conferences: "Yes," "No," and "Vacant." The "Vacant" option is of concern, as Part Q establishes a new definition of "vacant and abandoned," sets forth new requirements and timelines, and enhances protections for homeowners in default. While it is important to know if a property is truly vacant and abandoned, the forms must clearly indicate whether a property designated as "vacant" has met all the criteria set forth in Part Q. JASA/LSEQ is very concerned that this check box could end up subverting the recently enacted vacant and abandoned provision, because it may encourage checking off of the box without regard to the adjudication of vacant and abandoned status required by the new provisions. Our office recently had an elderly client locked out of his home because the financial institution informed the court that a home was abandoned when in fact it was not.

Remaining in Possession

The Intake Form includes a field to record whether the homeowner wishes to remain in possession of his or her home. At the first conference, homeowners often learn for the first time their rights and what options are available. It therefore is usually premature to require a homeowner to choose at this early stage whether they want to stay in their home, especially since they may not yet have connected with legal services providers before their first conference and may have an incomplete understanding of their available options. Seniors can often feel intimidated and receive misinformation and believe that they have no choice but to move. This is why, under the new legislation, the 90-day notice must state affirmatively that a homeowner has a right to remain in their home until a court orders the individual to leave. It would be more appropriate to ask this question after some investigation and review (and preferably after homeowners have had an opportunity to consult with an advocate). At a minimum, there should be a "don't know" option.

"Does not meet the criteria." The Intake Form includes a field to indicate that the case does not meet the criteria of Uniform Rule 202.12-a(a) (erroneously referred to as "Uniform Rule 202.129(a)" on the Intake Form). In addition to this option, the form should have a space to record the court's basis for that conclusion. Additionally, we note that Uniform Rule 202.12-a is now in need of amendment in order to be consistent with the recent amendments to CPLR 3408.

Loan and Income Information. Advocates working with distressed homeowner defendants often find that the mortgage information provided at the initial conference is incorrect. It therefore may prove more helpful to place this information on the status conference form or on both the intake and status conference forms in order to ensure that subsequent conferences are guided by correct information. In addition, the information fields on the Intake Form do not reflect all of the information now required under CPLR 3408(e): for example, information on whether the plaintiff is the owner of the mortgage and note, and if not, providing the court and homeowner with the information concerning the legal owner.

As a legal services provider working with victims of financial exploitation and scams, we are especially concerned that the proposed form contemplates inclusion of homeowners' private income information on a publicly filed document. The form should include a field to indicate whether the defendant provided the required income information but should not violate defendants' privacy interests by compelling inclusion of such information on this form.

Comments on Status Form

Schedule. The Intake Form includes a section with a series of deadlines for submission of documents and responses to submissions. Such a schedule should also be included on the Status Form, because the modification application process typically entails the submission of

additional and supplemental documents, and often spans multiple conferences during the conference process.

Good-faith negotiation requirement. CPLR Rule 3408(f) requires that the parties negotiate in good faith in the conference process, and Part Q now details criteria for evaluating the totality of the circumstances by which satisfaction of this requirement is measured. The Status Form should include a field to indicate whether these criteria have been met. Recording such information contemporaneously, as conferences are ongoing, will reduce the need for good faith adjudications and, when such motion practice is required, will make the associated factual determinations far more efficient.

Case dispositions. To the dispositions listed on the form, the "deed in lieu of foreclosure" should be added to the Status Form; Part Q expressly contemplates this disposition as an outcome that may be sought through the settlement conference process. Additionally, a field should be added to enter a deadline for plaintiff to return a countersigned modification agreement to the homeowner.

Thank you again for the opportunity to comment on the proposed forms. We appreciate OCA's recognition of the importance of the residential foreclosure process and the impact it has on so many unrepresented older New Yorker homeowners. If you have questions, please contact me at 718-286-1515.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Donna Dougherty', written over a horizontal line.

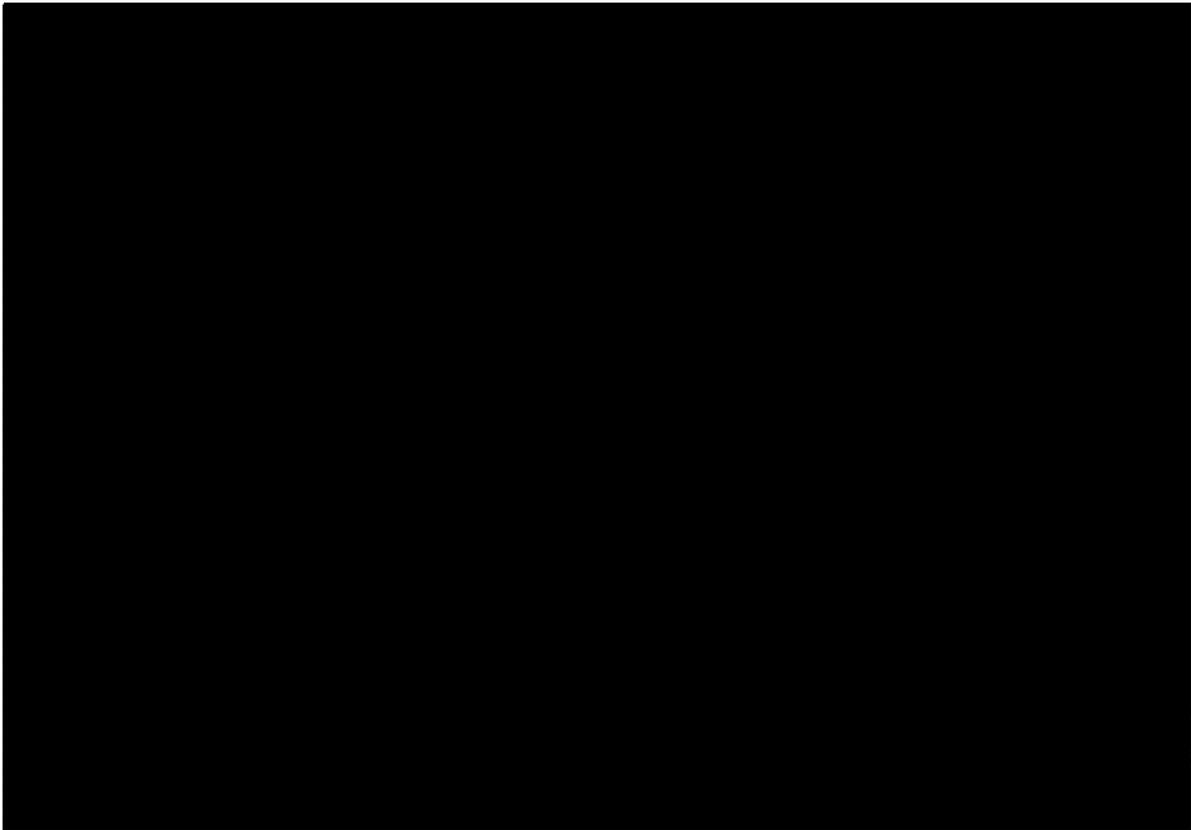
Donna Dougherty
Attorney in Charge

**New York City Bar Association
Mortgage Foreclosure Task Force**

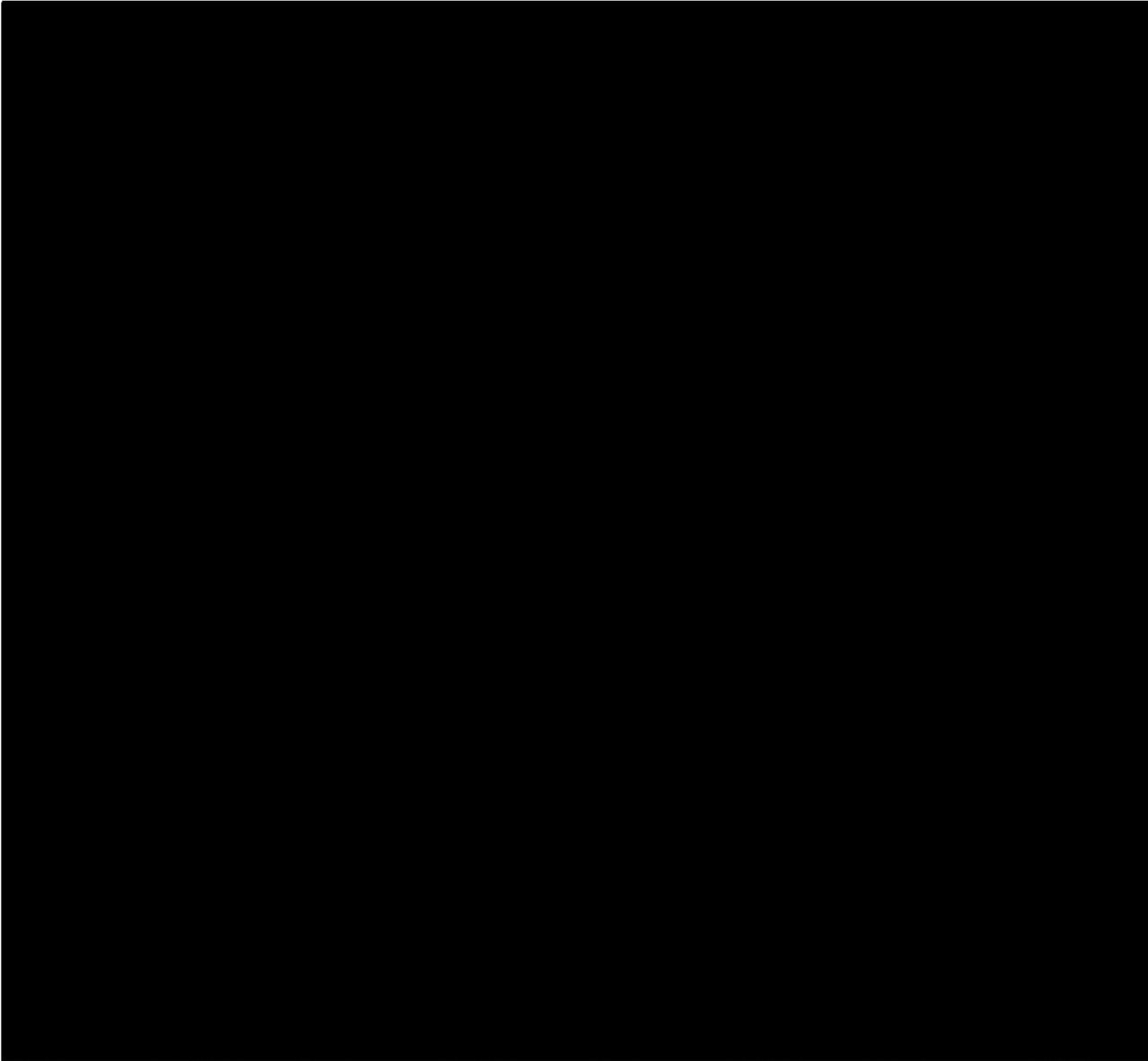
Minutes for Meeting Held October 26, 2016

Present:

Hon. Lucy Billings
Sara Boriskin
Allison Funk
Hon. Doris M. Gonzalez
Rich Haber
Jacob Inwald
Saul Leopold
Susan Pepitone
Kelly Ann Poole
Greg Savran
Kerry Ward
Jackie Weinstein
Marianne Sanchez, Secretary



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VI. Discussion about OCA's proposed intake and status forms to be used in mandatory settlement conferences

- This topic of discussion was moved from the beginning of the meeting to the end of the meeting to allow for a productive discussion. Larry and Saul discussed the November 1 deadline to submit comments and agreed it may be difficult to submit something as a group. One option is for the Task Force to submit all comments, including the names (with law firms) of who made the comments. (Saul Leopold)
- Initial comment about how productive this discussion is as comments are due to the OCA on November 1 – next Tuesday. Some Task Force

members are working on comments with their respective groups. History implies that it takes a lot of time for the Task Force to come to a consensus. This group may not be able to submit a comment letter within this short time frame. (Jacob Inwald)

- The intake form does not include a section for obligors on the Note. The section about modifications could be clearer, to allow for how many prior modifications there are and the date of each modification. Monthly payment compared to PITI is confusing. Not all loans are escrowed. (Greg Savran)
- Discussion on intake form's "Loan and Income Information" section generally and specifically with regard to "Defendant Income" space. Most Task Force members agree that there are privacy concerns in providing this information. Discussion on whether or not these forms are intended as court notes or if they will be filed with the clerk.
- Intake form is a form for the Court to maintain and is not itself a loan modification application. (Jacob Inwald)
- Borrowers are not always aware of how much they make until they submit an application. The amount fluctuates and depends on the proofs available. Counsel may not know how much borrowers make, especially if a borrower is not at the conference. (Allison Funk)
- There is a concern about clarity. Should income be included or not? Referees should have an idea of how to dispose of the case. If income is not included, then Payoff and Reinstatement amounts shouldn't be included. (Greg Savran)
- Overall comment on these forms is that they do not reflect changes in law that go into effect in December. (Jacob Inwald)
- Discussion on purpose of the forms: creates a record so if there's an issue later on, there is a court record that can show compliance/non-compliance; reduces factual issues down the road; provides scheduling order function. (Jacob Inwald, Saul Leopold, Kerry Ward, Sara Boriskin)
- Discussion on how forms are used, who fills them out, availability in other languages. (Allison Funk, Hon. Doris M. Gonzalez, Kerry Ward, Greg Savran)

- Task Force unanimous opinion that income information on the intake form is potentially too detailed and could be a violation of privacy.
- Additional discussion regarding income section of intake form.
- Intake form undermines fact that other loss mitigation options are appropriate for settlement conferences. Intake form doesn't reflect new requirements regarding opportunity to put in a late answer. It should include something reflecting requirements of the new law and explaining the process to the homeowner. (Jacob Inwald)
- Intake form was revised on June 6, 2016 – before the new legislation was passed. (Saul Leopold)
- Form does not include section for whether or not other mortgages are secured on the property. (Jackie Weinstein)
- The form doesn't include anything about referring matter to a Judge if there's an issue with findings – a way to get past the issue rather than to keep conferencing. (Saul Leopold)
- Scheduling order should be on a separate page from intake information. (Sara Boriskin)
- Review of general comments: limiting personal information disclosed, providing borrower with information regarding options presented to them under new law, property type, other loss mitigation, including obligors on the Note, breaking down PI and PITI, breaking down prior modification information (including dates).
- More discussion regarding "Loan and Income Information" section of intake form.
- Statewide, there have been several comments on that section. People actually want OCA to add more information in that box. (Kerry Ward)
- As a Referee, you would find out whether or not parties are seriously engaging in negotiations. In matrimonial cases, there is a net worth statement for parties to fill out, though matrimonial cases are sealed. (Hon. Doris M. Gonzalez)
- Courts happy to give borrowers opportunities to work it out with the bank but if the numbers don't work, they will never work. Form itself will not

address every circumstance, though it is not intended to limit negotiations.(Kerry Ward)

- Discussion regarding intake form versus notes that Referees take for their own information.
- Discussion on bringing up prior actions and dismissals in conferences.
- The goal of the forms is uniformity for all 62 counties and to encourage similar questions – starts conversation, directs negotiations. If a borrower is pro se, these types of questions help save time for borrower by helping them to know what proof of income to provide. This saves time for both parties. (Greg Savran)
- Jacob and Susan are only borrower advocates at tonight's meeting. As such, Jacob does not feel as if the Task Force has reached a consensus. (Jacob Inwald)
- General comments on the status form: more room to elaborate on Referee's findings/failure to comply and elaborate on next steps and obligations of the parties.
- Marianne will draft minutes by end of day tomorrow and will send them to Task Force to review.

The meeting adjourned at 7:13 p.m.

John W. McConnell

From: Jacob Inwald <[REDACTED]>
Sent: Friday, October 28, 2016 1:43 PM
To: rulecomments
Cc: Kerry Ward
Subject: Proposed Uniform Forms for Use in Residential Foreclosure Settlement Conferences
Attachments: LSNYC Comment Letter on OCA SC Forms.pdf

Dear Mr. McConnel,

Enclosed please find comments submitted by Legal Services NYC concerning the above-referenced foreclosure settlement conference proposed forms.

Respectfully submitted,

Jacob Inwald
Director of Foreclosure Prevention
Legal Services NYC
40 Worth Street, Suite 606
New York, New York 10013
646-442-3634 (phone and facsimile)
jinwald@lsnyc.org

****Please note new e-mail address****

<http://www.legalservicesnyc.org/>



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October 28, 2016

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John W. McConnell, Esq.
Counsel, Office of Court Administration
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Re: Proposed Uniform Forms for Use in Residential Foreclosure Proceedings

Dear Mr. McConnell:

I submit these comments on behalf of Legal Services NYC concerning the proposed uniform "Foreclosure Settlement Conference Intake Form" (the "Intake Form") and "Foreclosure Settlement Conference Status Form" (the "Status Form") for use in residential foreclosure proceedings. We thank the Office of Court Administration (OCA) for providing this opportunity to comment on the proposed forms and have set forth below several comments and suggested improvements to these proposed forms.

Legal Services NYC provides free, high-quality legal help in civil matters to low-income people throughout New York City. The foreclosure prevention and anti-predatory lending practices of Legal Services NYC are located at Brooklyn Legal Services, Staten Island Legal Services, Queens Legal Services and Bronx Legal Services, and we operate the largest free civil legal services foreclosure prevention program in the country, with nearly 40 advocates representing homeowners in New York's neighborhoods hardest-hit by the foreclosure crisis. We have been at the forefront of the national fight against predatory lending practices and have pursued affirmative litigation challenging predatory lending, credit discrimination and abusive mortgage servicing, while representing thousands of New York City families each year navigating New York's judicial foreclosure process and the mandatory settlement conferences, which remain a vital tool in preventing avoidable foreclosures.

We greatly appreciate the leadership of Honorable Sherry Klein Heitler and the Office of Policy and Planning in developing statewide forms in order to provide clear, uniform and accurate recordings of the proceedings for both litigants and the courts. We have long advocated for adoption of such uniform forms across the state, and we believe that it is especially critical for unrepresented homeowners who are attempting to navigate the judicial foreclosure process to understand their rights and

responsibilities and receive accurate, clear information about their conferences and a record of the directives issued by the court personnel presiding over the conferences.

Preliminarily, we note that these forms were apparently devised prior to the enactment of Part Q of Chapter 73 of the Laws of New York 2016 ("Part Q"), and therefore do not reflect the substantial changes in the landscape effected by the substantial recent amendments to CPLR 3408, which become effective on December 20, 2016. We therefore respectfully suggest that these forms be revised in order to reflect the current state of the law, as detailed below.

Comments on Layout and General Content

Layout. Both forms are intended to enable thorough and accurate documentation of the circumstances of the case and progress from one conference to the next. The resulting record will both inform the parties and enable judges and court personnel to maximize the effectiveness of each conference. The volume of information to be recorded on the forms, however, evidently cannot be made to fit comfortably on one page; the effort to do so results in small font size and cramped spacing, as well as limited space for written comments. Senior homeowners and others with vision problems will find it difficult to read and understand the printed form, much less the handwritten notations to be entered in the small spaces. The completed forms will necessarily include critical information—including adjournment dates and other deadlines—that must be prominent and large enough to read. On the current version of the forms, the adjournment date and time are to be entered on short lines in the last sentence in a series of outcomes and court codes. We believe that two-page forms will facilitate clearer information for both court personnel and the litigants.

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Forms in electronic format. We understand that court personnel will be able to use these forms either pre-printed in triplicate or as computer-based fillable PDF forms. We urge that, to the extent possible, the forms be filled out electronically on fillable PDF forms. This will make the completed forms more legible for the parties and court personnel alike, will make the completed forms more accessible and more easily searchable for relevant information, and will make it easier for these documents be made part of the court record in redacted form.

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Appearances. Both forms include a box in which parties' appearances are to be entered. The current versions do not include a space for a notation to indicate whether the attorney appearing on

behalf of plaintiff is a *per diem* counsel or plaintiff's retained counsel—information that is particularly important in the context of residential foreclosure proceedings, given the persistent difficulties encountered in enforcing the statutory requirement of appearance with settlement authority and plaintiffs' pervasive use of *per diem* appearance lawyers who often lack even the most basic information about the cases in which they appear.

For defendant's appearance, rather than the selection "of counsel" (a potentially misleading term, as attorneys are often identified as "of counsel" to their legal services or law offices), we suggest that available options include "retained," "limited representation," and "attorney for the day." This would better reflect the reality on the ground in settlement conferences, where homeowners may either be acting *pro se*, be represented by a legal services agency for settlement conferences only pursuant to a limited retainer, may be represented by an attorney for full representation, or may be represented by a pro bono "attorney for the day" program operated by a local bar association. We further suggest that for defendants who are unrepresented, a check-box be added to the form to indicate whether the defendant has been given a list of free legal services providers and housing counseling services available in their geographic area.

In addition, in light of the explicit statutory requirement to appear with authority to settle (CPLR 3408 (c)), both the intake and status forms should have a means of recording whether the individuals and counsel appearing at the conference complied with this statutory requirement. This is especially important in light of the recent amendments to CPLR 3408, which enumerate appearance with authority pursuant to CPLR 3408(c) as one of the indicia of good faith participation in settlement conferences pursuant to CPLR 3408(f).

Comments on Intake Form

New legal protections. Consistent with Part Q, the Intake Form should record whether the homeowner has answered or moved to dismiss, was provided with information about answering a complaint in a foreclosure proceeding that the Court is now required to provide, received a copy of the Consumer Bill of Rights and information about free local legal resources providing assistance with pro se answers, whether the new 90-day notice was served, and should specify the date upon which an answer is due (30 days after the initial conference) and vacatur of any default. Recording this information will both provide greater clarity for unrepresented parties and will constitute a record of the Court's compliance with these statutory directives.

Eligibility. The Intake Form includes three possible boxes to check in response to a question regarding eligibility for settlement conferences: "Yes," "No," and "Vacant." We are concerned about the third category for two reasons. First, certain sections of Part Q (to be codified as new RPAPL § 1309) establish criteria for a determination (by a court or by a government entity) that a property is "vacant and abandoned." Accordingly, if the form invites settlement conference personnel or judges to identify a property as "vacant," it should refer to the new statutory provisions to ensure that the homeowner is

afforded the enhanced protections provided for in the statute. Our second concern is that the “vacant” option is redundant, because if a property subject to foreclosure is vacant, the case is by definition not eligible for settlement conferences under CPLR 3408. We therefore recommend that the “vacant” option be eliminated and replaced with a line or space for the court, in the event it selects “No,” to indicate why it has determined that the case is not eligible for settlement conferences.

Remaining in Possession. The Intake Form includes a field to record whether the homeowner wishes to remain in possession of his or her home. At the first conference, homeowners often learn for the first time their rights and what options are available. It therefore is usually premature to require a homeowner choose at this early stage whether they want to stay in their home, especially since they may not yet have connected with legal services providers before their first conference and may have an incomplete understanding of their available options. Homeowners often receive misinformation and may believe that they have no choice but to move. This is why, under the new legislation, the 90-day notice must state affirmatively that a homeowner has a right to remain in their home until a court orders the individual to leave. It would be more appropriate to ask this question after some investigation and review (and preferably after homeowners have had an opportunity to consult with an advocate). At a minimum, there should be a "don't know" option.

"Does not meet the criteria." The Intake Form includes a field to indicate that the case does not meet the criteria of Uniform Rule 202.12-a(a) (erroneously referred to as "Uniform Rule 202.129(a)" on the Intake Form). In addition to this option, the form should have a space to record the court's basis for that conclusion. Additionally, we note that Uniform Rule 202.12-a is now in need of amendment in order to be consistent with the recent amendments to CPLR 3408.

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We are especially concerned that the proposed form contemplates inclusion of homeowners' private income information on a publicly-filed document. The form should include a field to indicate whether the defendant provided the required income information but should not violate defendants' privacy interests by compelling inclusion of such information on this form. We note that the form should serve as a tool to record the results of each individual conference and should provide a record of the proceedings at each conference and the parties' compliance with CPLR 3408's requirements and court rules and directives, but should not serve as an underwriting work sheet for determining eligibility for a loan modification which, of course, is for determination by the parties and not the courts.

Comments on Status Form

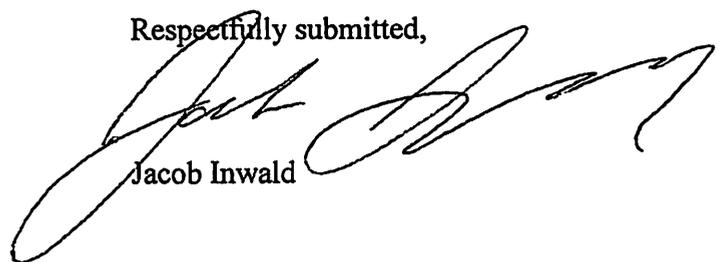
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Thank you again for the opportunity to comment on the proposed forms. We appreciate OCA's recognition of the importance of the residential foreclosure process and the impact it has on so many unrepresented New Yorker homeowners. We also appreciate your willingness to consider our comments and proposed revisions to the intake and status forms. Please do not hesitate to contact the undersigned should you have any questions or follow-up concerning these comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jacob Inwald', is written over the typed name. The signature is fluid and cursive, with a large loop at the end.

Jacob Inwald

John W. McConnell

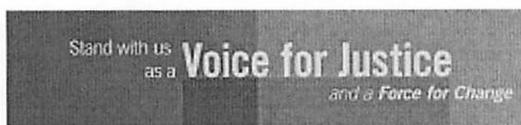
From: Jacob Inwald <[REDACTED]>
Sent: Friday, October 28, 2016 11:08 AM
To: rulecomments
Cc: Kim M Ward
Subject: Request for Public Comment on Proposed Uniform Forms for Use in Residential Foreclosure Proceedings
Attachments: NYRL Comment Letter on OCA Settlement Conference Forms Oct 28 2016.pdf

Dear Mr. McConnell,

Attached please find comments submitted on behalf of New Yorkers for Responsible Lending's Mortgage Working Group. Many thanks for your consideration of these comments, and please do not hesitate to reach out should you have any questions about these comments.

Respectfully,

Jacob Inwald
Director of Foreclosure Prevention
Legal Services NYC
40 Worth Street, Suite 606
New York, New York 10013
646-442-3634 (phone and facsimile)
jinwald@lsnyc.org
Please note new e-mail address
<http://www.legalservicesnyc.org/>



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NEW YORKERS FOR RESPONSIBLE LENDING

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NEW YORKERS FOR RESPONSIBLE LENDING

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NEW YORKERS FOR RESPONSIBLE LENDING

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We are especially concerned that the proposed form contemplates inclusion of homeowners' private income information on a publicly filed document. The form should include a field to indicate whether the defendant provided the required income information but should not violate defendants' privacy interests by compelling inclusion of such information on this form.

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Schedule. The Intake Form includes a section with a series of deadlines for submission of documents and responses to submissions. Such a schedule should also be included on the Status Form, because the modification application process typically entails the submission of additional and supplemental documents, and often spans multiple conferences during the conference process.

Good-faith negotiation requirement. CPLR Rule 3408(f) requires that the parties negotiate in good faith in the conference process, and Part Q now details criteria for evaluating the totality of the circumstances by which satisfaction of this requirement is measured. The Status Form should include a field to indicate whether these criteria have been met. Recording such information contemporaneously, as conferences are ongoing, will reduce the need for good faith adjudications and, when such motion practice is required, will make the associated factual determinations far more efficient.

Case dispositions. To the dispositions listed on the form, the "deed in lieu of foreclosure" should be added to the Status Form; Part Q expressly contemplates this disposition as an outcome that may be sought through the settlement conference process. Additionally, a field should be added to enter a deadline for plaintiff to return a countersigned modification agreement to the homeowner.

Thank you again for the opportunity to comment on the proposed forms. We appreciate OCA's recognition of the importance of the residential foreclosure process and the impact it has on so many unrepresented New Yorker homeowners. We also appreciate your willingness to consider our comments and proposed revisions to the intake and status forms. If you have questions, please contact Jacob Inwald, Director of Foreclosure Prevention, Legal Services NYC, at (646) 442-3634, jinwald@lsnyc.org, Sara Manaugh, Deputy Director, Homeowner & Consumer Rights Project, Queens Legal Services, at (347)-592-2273, smanaugh@lsnyc.org, or Donna Dougherty, Attorney-in-Charge,



NEW YORKERS FOR RESPONSIBLE LENDING

JASA/Legal Services for the Elderly in Queens, at (718) 286-1515, ddougherty@jasa.org, or in the alternative, any of the undersigned organizations.

Respectfully submitted,

Bronx Legal Services
Brooklyn Legal Services
Center for New York City Neighborhoods
Cypress Hills Local Development Corporation
DC 37 Municipal Employees Legal Services
Empire Justice Center
Foreclosure Resisters
Grow Brooklyn
JASA/Legal Services for the Elderly in Queens
Legal Services NYC
Long Island Housing Services
MFY Legal Services, Inc.
Nassau/Suffolk Law Services
Neighborhood Preservation Co./Human Development Services of Westchester
New York Legal Assistance Group
Queens Legal Services
Rockland Housing Action Coalition, Inc
Staten Island Legal Services
St. Vincent DePaul Legal Program, Inc. Consumer Justice for the Elderly Litigation Clinic, St. John's
University School of Law
Westchester Residential Opportunities Inc.
Western New York Law Center

John W. McConnell

From: Joseph Kelemen [REDACTED]
Sent: Thursday, October 27, 2016 3:20 PM
To: rulecomments
Subject: Proposed Uniform Forms for Use in Residential Foreclosure Proceedings
Attachments: Comments to OCA on Proposed Uniform Forms for Use in Residential Foreclosure Proceedings.pdf

Mr. McConnell:

Here are the comments of the Western New York Law Center on the Proposed Uniform Forms for Use in Residential Foreclosure Proceedings

Thank you.

Joseph Kelemen
Executive Director
Western New York Law Center
237 Main Street
Suite 1130
Buffalo, NY 14203
716 855-0203, ext. 101
jak@wnylc.com
www.wnyc.com



October 28, 2016
rulecomments@nycourts.gov

John W. McConnell, Esq.
Counsel, Office of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004

Re: Proposed Uniform Forms for Use in Residential Foreclosure Proceedings

Dear Mr. McConnell:

The Western New York Law Center respectfully submits the following comments concerning the proposed uniform "Foreclosure Settlement Conference Intake Form" (the "Intake Form") and "Foreclosure Settlement Conference Status Form" (the "Status Form") for use in residential foreclosure proceedings. We thank the Office of Court Administration (OCA) for providing this opportunity to comment on the proposed forms and have set forth below several comments and suggested improvements to these proposed forms.

We greatly appreciate the leadership of Honorable Sherry Klein Heitler and the Office of Policy and Planning in developing statewide forms in order to provide clear, uniform and accurate recordings of the proceedings for both litigants and the courts. We believe that it is especially critical for unrepresented homeowners who are attempting to navigate the judicial foreclosure process to understand their rights and responsibilities and receive accurate, clear information about their conferences and a record of the directives issued by the court personnel presiding over the conferences.

Preliminarily, we note that these forms were apparently in development prior to the enactment of Part Q of Chapter 73 of the Laws of New York 2016 ("Part Q"), and therefore do not reflect the substantial changes in the landscape effected by the substantial recent amendments to CPLR 3408, which become effective on December 20, 2016. We therefore respectfully suggest that these forms be revised in order to reflect the current state of the law, as detailed below.

Comments on Layout and General Content

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Respectfully submitted,


Joseph Kelemen
Executive Director

FORECLOSURE RESISTERS

November 5, 2016

rulecomments@nycourts.gov

John W. McConnell, Esq. Counsel, Office of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004

Re: Proposed Uniform Forms for Use in Residential Foreclosure Proceedings

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Respectfully submitted,

Matthew Bowen
Kenneth Street
Juanita Munoz
Alvin
Nick Hata

RECEIVED

2016 NOV 15 A 8:43

COUNSEL'S OFFICE
OFFICE OF
COURT ADMINISTRATION

[Faint handwritten notes and signatures, including what appears to be a name like "L. Jones" and some illegible text.]

[Extremely faint, illegible text, likely bleed-through from the reverse side of the page.]

John W. McConnell

From: Gregory Savran [REDACTED]
Sent: Monday, October 31, 2016 2:35 PM
To: rulecomments
Cc: Kelly Poole
Subject: Intake and Status Forms

Hello, please see our comments regarding the intake form specifically:

1. The form should make clear who is on the Note to determine whether the appearing defendant is actually on the note. E.g., a section that states "Obligor(s) on the Note".
2. There is a section that says "Monthly Payment: ____ PITI: ____". This section is not very clear. For instance, monthly payment at origination? At default? Is this the Principal and interest payment or total PITI payment including escrow. The PITI section could mean yes or no or mean the PITI amount. It would be suggested to have this section state "Monthly PI Payment at default ____ Monthly PITI payment at Default (if escrowed) ____". This will also help the Referee understand how much the escrow obligation is as some counties may have very high taxes/escrows that will impact the overall affordability of the loan.
3. Prior Modification Section: what is not clear here is the form has an origination date and a default date. However, this default may be on a modification. So for instance, if the loan was taken out in 1995 and defaulted in June 2015 this may look like years of payments. However, if the loan was modified in April 2015 then this creates a more different picture for the Referee/Judge to consider. For this reason it would be suggested to have a section of three lines: Prior Modification 1 Date ____ (the HAMP Y/N section could remain). There should be three lines to indicate Prior Modification 1-3 as it is not uncommon to go up to three modifications.
4. Gross Income Break Down: We would agree that if this form is filed and public record then having the gross income broken down is concerning (discussed at the OCA Foreclosure Task Force Meeting on 10/26). If the purpose, however, is for a Referee to determine how to dispose of the action then the income can certainly remain and would be helpful for the parties to discuss. However, this income breakdown is a half measure. The income should either simply have a total income estimate "Defendant Monthly Income" or should be broken down further than it is. In addition to Contribution Income and Rental Income there should then be a section for all sources of income. The other income types would be 1) Wages; 2) self-employment income 3) Benefit/Awards Income (such as pensions or social security income). Having a full breakdown of all income types may be helpful for the Referee to advise what income proof is generally needed for each income type to help create the dialogue of next steps and have a more accurate financial package.

Thank you,

Gregory M. Savran, Esq.
Managing Attorney
Court Appearance Department
Rosicki, Rosicki & Associates P.C.
51 E. Bethpage Road
Plainview, New York 11803
(516) 741-2585 x 223
Fax (516) 870-7923

WE ARE A DEBT COLLECTOR AND ARE ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Come Visit Us At: www.rosicki.com

To escalate concerns, please email: concerns@rosicki.com

To send a compliment on our service, please email: compliment@rosicki.com

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is confidential. If the reader of this message is not the intended recipient, any dissemination, distribution or copying of this communication is prohibited. If you received this message in error, please delete and/or notify the sender by return e-mail. Although our company attempts to sweep e-mail and attachments for viruses, it does not guarantee that either are virus-free and accepts no liability for any damage sustained as a result of viruses. Thank you.

IRS Circular 230 Disclosure: To ensure compliance with U.S. Treasury regulations we inform you that any U.S. tax advice contained in this communication (including any attachments or enclosures) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.

John W. McConnell

From: Reference, Shared <[REDACTED]>
Sent: Wednesday, October 26, 2016 3:43 PM
To: rulecomments
Subject: Proposed Uniform Forms for Use in Residential Foreclosure Proceedings: comment

Dear Sir: With respect to this proposal:

- 1) In the first form, isn't the reference to "Uniform Rule 202.129(a)" a typo?
- 2) What on earth do all the acronyms mean? Lawyers know them, but given that many defendants represent themselves, surely you owe them a glossary.

Respectfully submitted,

Bob Emery

Albany Law School library

John W. McConnell

From: Karen R. Jordan
Sent: Thursday, September 29, 2016 10:16 AM
To: rulecomments
Subject: Proposed Statewide Forms Referee Report, Referee Supplemental Conference Form
Attachments: Cortland Supreme Court Referee Report.pdf; Cortland Supreme Court Referee Supplemental Report.pdf

Could the RJI be included in the form, for those courts who do CARS by RJI? I do have some concerns regarding the flow of the form. As self-represented litigants under stress will be receiving a copy, it may be overwhelming trying to cull out what their responsibilities are. I have attached the forms with the same content in a different lay out that may be easier to navigate. On the Supplemental form could the next conference information be added? Thank you.

Cortland Supreme Foreclosure Referee Report

Short Caption: _____ Index: _____ RJI: _____

Appearance for Plaintiff _____ Local
 Appearance for Defendant(s) _____ SRL
 Phone/Email _____ Phone/Email _____

Eligible for FSC pursuant to CPLR 3408(a) Defendant(s) want to remain in possession

FOLLOWING A SETTLEMENT CONFERENCE, IT IS HEREBY DIRECTED THAT:

Plaintiff to do:		Due by	Defendant to do:		Due by
<input type="checkbox"/>	1. Provide Loan Modification/Short sale Application		<input type="checkbox"/>	2. Send completed application	
<input type="checkbox"/>	3. Additional information needed, in writing to Def.				
<input type="checkbox"/>	4. Provide the following document(s): _____		<input type="checkbox"/>	5. Provide the following document(s): _____	
<input type="checkbox"/>	6. Advise if loan modification or other application is granted or denied		<input type="checkbox"/>	7. Advise if offer is accepted	
<input type="checkbox"/>	8. Denial of application explanation in writing. The explanation shall have attached the following (where applicable): <input type="checkbox"/> If a restriction is the basis for the denial, documents reflecting the restrictions to modification, in their entirety, and documentation of Plf efforts to obtain waiver of such restriction(s). <input type="checkbox"/> The property valuation <input type="checkbox"/> Evidence of title issues <input type="checkbox"/> NPV (net present value) inputs used. <input type="checkbox"/> An itemized explanation of the unpaid principal balance used in the calculations <input type="checkbox"/> Other _____				
			<input type="checkbox"/>	9. Will appeal denial of loss mitigation application	

10. Other _____

11. A representative of Plf. with personal knowledge of the mortgage loan and loan modification request and the full authority to grant a modification, and respond to and make offers of settlement, **shall appear** at the next conference on the date set below:

12. This matter is adjourned to _____ at _____ a.m./p.m. for further conferencing. (circle) In Person By Phone

Plaintiff's comments:	
Date:	Plaintiff's Signature
Defendant's comments:	
Date:	Defendant's Signature
Directed by:	
Date:	JHO/ Referee Signature

Cortland Supreme Foreclosure Supplemental Referee Report

Short Caption: _____ Index: _____ RJI: _____
 Appearance for Plaintiff _____ Appearance for Defendant(s) _____
 _____ Local _____ SRL
 Phone/Email _____ Phone/Email _____

CONFERENCE SUMMARY: Mortgage Servicer: _____

FOLLOWING A SETTLEMENT CONFERENCE, IT IS HEREBY DIRECTED THAT:

Plaintiff Did:	on Date	Defendant Did:	on Date
		<input type="checkbox"/> 1. Sent initial/updated modification/short sale package to plaintiff	
<input type="checkbox"/> 2. Asked defendant to send the following additional documents: _____ Send to: (name/address/fax) _____		<input type="checkbox"/> 3. Defendant provided the requested documents <input type="checkbox"/> Following are still missing _____	
<input type="checkbox"/> 4. Loan modification/other application was complete. <input type="checkbox"/> Plaintiff acknowledged			
<input type="checkbox"/> 5. Offered <input type="checkbox"/> Trial Modification <input type="checkbox"/> Permanent Modification <input type="checkbox"/> Short Sale approval to defendant		<input type="checkbox"/> 6. Advise if offer is accepted. If rejected, why? _____	
7. As indicia of compliance with CPLR 3408 (c) (authority to settle) and CPLR 3408 (e), the following has been provided, where applicable			
<input type="checkbox"/> The mortgage and note CPLR 3408 (e) <input type="checkbox"/> Payment history pursuant to CPLR 3408 (e) <input type="checkbox"/> Itemization of amounts needed to cure and pay off the loan pursuant to CPLR 3408 (e) <input type="checkbox"/> A response to a proposed offer of settlement, if Def. made an offer <input type="checkbox"/> NPV (Net Present Value) report used by plaintiff <input type="checkbox"/> Current information about the status of Def. Loss mitigation application, if any <input type="checkbox"/> Complete information about any claimed restrictions preventing modification of the loan. <input type="checkbox"/> Information regarding all potential title issues <input type="checkbox"/> An informed and knowledgeable representative of plaintiff appeared by telephone on [date] _____ Other _____		<input type="checkbox"/> Proof of current income <input type="checkbox"/> Most recent tax return <input type="checkbox"/> Most recent property tax statements <input type="checkbox"/> Other:	
<input type="checkbox"/> 8. Did not comply with this Court's Prior directive of _____ in that: _____		<input type="checkbox"/> 9. Did not comply with this Court's Prior directive of _____ in that: _____	

10. Other _____
 11. This matter is adjourned to _____ at _____ a.m./p.m. for further conferencing. (circle) In Person By phone

Plaintiff's comments: Date: _____ Plaintiff's Signature _____
Defendant's comments: Date: _____ Defendant's Signature _____
Directed by: Date: _____ JHO/ Referee Signature _____



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LAWRENCE K. MARKS
Chief Administrative Judge

HON. SHERRY KLEIN HEITLER
Chief of Policy & Planning
New York State Courts

MEMORANDUM

TO: Administrative Board
FROM: Hon. Sherry Klein Heitler, 
Chief of Policy and Planning, New York State Unified Court System
RE: Statewide Foreclosure Conference Forms
DATE: December 9, 2016

Following prior approval by this Administrative Board of a proposed statewide uniform Foreclosure Settlement Conference "Intake Form" and a statewide uniform Foreclosure Settlement Conference "Status Form", and after receiving public comments thereon from the plaintiffs' bar and the defense bar, the Office of Policy and Planning has made substantive changes to both forms as follows:

Intake Form

- The appearance box now allows plaintiff's counsel and defendant's counsel to clarify the scope of their representation;
- The eligibility box asks whether the defendant has filed an answer. This was included in response to new foreclosure legislation that goes into effect on December 20, 2016;
- The loan and income information box was condensed in response to concerns from practitioners about making homeowners' sensitive financial information publicly available.

Status Form

- The appearance box now allows plaintiff's counsel and defendant's counsel to clarify the scope of their representation;
- In response to the new foreclosure legislation, there are now several questions regarding the defendant's answer;
- At the request of court personnel and private practitioners, the Intake Form's "Following a Settlement Conference" box was added to the Status Form.

In addition, both forms' appearance and functionality were improved to make them easier to use. The text was made as large as possible and divider lines were inserted to separate the various sections.

Additional Information Form

- Created for use on an as-needed basis for court personnel who preside over settlement conferences.

The Office of Policy and Planning respectfully requests that the annexed uniform Foreclosure Settlement Conference Intake and Status Forms be approved as amended, that the Additional Information Form be approved, and that all three forms be mandated for use in CPLR 3408 Foreclosure Settlement Conferences statewide.

FORECLOSURE SETTLEMENT CONFERENCE INTAKE FORM

Supreme Court of the State of New York County of _____
_____ Plaintiff(s), v. Index No.: _____
_____ Defendant(s).

A Residential Foreclosure Conference was held on _____

Appearances For Plaintiff(s) ("P") Retained Per Diem

Name: _____ Email/Phone: _____

Law Firm: _____ Loan Servicer: _____

For Defendant(s) ("D") Unrepresented Retained Counsel Limited Representation Other

Name: _____ Email/Phone: _____

Law Firm: _____ Servicer Provider: _____

Other: _____

ELIGIBILITY

This foreclosure action is eligible for an FSC: Yes No _____

Has the defendant filed an answer: Yes No

This case does not meet the criteria of Uniform Rule 202.12(a). (FSCNER) (FSCNEU) _____

D failed to appear at the scheduled conference, P to proceed with the action. (FSCDFTR) (FSCDFTU)

LOAN AND INCOME INFORMATION

Mortgage Date: _____ Default Date: _____

Plaintiff is the Owner of the Mortgage and note Yes No _____

Prior Modification 1 _____ Prior Modification 2 _____ HAMP Yes No

Other: _____

FOLLOWING A SETTLEMENT CONFERENCE, IT IS HEREBY DIRECTED THAT:

By _____ [date], P shall provide to D a loan modification/short sale application.

By _____ [date], D shall submit to P a completed loan modification/short sale application.

By _____ [date], P shall send Missing Document Letter, if necessary.

By _____ [date], D shall respond to the Missing Document Letter.

Other: _____

Case settled by loan modification other _____

Case Discontinued except by settlement. P shall file a Notice of Discontinuance and serve a Certified Copy of such Discontinuance upon D within (45) days of the date hereof. (FSCDISCR) (FSCDISCU)

Case is not settled and P may proceed with the action. (FSCCNSR) (FSCCNSU) Unless otherwise directed by the Court, failure to proceed will result in dismissal of the action.

Stayed pending other outcome. (FSCSTAYR) (FSCSTAYU)

The court directs an adjournment to _____ at _____

For a further conference. Trial modification. (FSCCTDR) (FSCCTDU)

Directed by:	P acknowledges receipt by signing below:	D acknowledges receipt by signing below:
Date:	Signature	Signature

FORECLOSURE SETTLEMENT CONFERENCE STATUS FORM

Supreme Court of the State of New York County of _____

_____ Plaintiff(s), v. Index No.: _____

_____ Defendant(s) # of prior conferences _____

A Residential Foreclosure Conference was held on _____

Appearances For Plaintiff(s) ("P") Retained Per Diem

Name:

Email/Phone:

Law Firm:

Loan Servicer:

For Defendant(s) ("D") Unrepresented Retained Counsel Limited Representation Other

Name:

Email/Phone:

Law Firm:

Servicer Provider:

Other: _____

Defendant Filed and Served an Answer, Default Vacated Defendant did NOT file an Answer

On _____ [date], D submitted an initial/updated modification/short sale package to P.

On _____ [date], P requested that D submit the following additional documents:

P did not comply with this Court's prior directive dated _____, in that: _____

D did not comply with this Court's prior directive dated _____, in that: _____

FOLLOWING A SETTLEMENT CONFERENCE, IT IS HEREBY DIRECTED THAT:

By _____ [date], P shall provide to D a loan modification/short sale application.

By _____ [date], D shall submit to P a completed loan modification/short sale application.

By _____ [date], P shall send Missing Document Letter, if necessary.

By _____ [date], D shall respond to the Missing Document Letter.

Other: _____

Case Settled by loan modification (FSCLMR) (FSCLMU) Case Dismissed (FSCDISMR) (FSCDISMU) _____

Case Settled other than loan modification (FSCOTR) (FSCOTU)
 loan reinstatement loan satisfaction MHA short sale Deed in Lieu

Case Discontinued. P shall file a Notice of Discontinuance and serve a Certified Copy of such Discontinuance, upon D within (45) days of the date herein. (FSCDISCR) (FSCDISCU)

Case is not settled and P may proceed with the action. Unless otherwise directed by the Court, failure to proceed will result in dismissal of the action. (FSCCNSR) (FSCCNSU)

Stayed pending other outcome (FSCSTAYR) (FSCSTAYU)

D failed to appear at the scheduled conference, P to proceed with action. (FSCDFTR) (FSCDFTU)

The court directs an adjournment to _____ at _____

For a further conference. Trial modification. (FSCCTDR) (FSCCTDU)

Directed by:	P acknowledges receipt by signing below:	D acknowledges receipt by signing below:
Date:	Signature	Signature

