

March 27, 2012

Chief Judge Andy Owens  
2002 Ringling Blvd.  
Sarasota, FL 34237

Re: Public Access to “original Notes” in Court Files

Your Honor:

My name is Mark Stopa. As a practicing attorney and member of The Florida Bar, I have the privilege of representing homeowners in pending foreclosure lawsuits, including lawsuits in Florida’s Twelfth Judicial Circuit, over which you are Chief Judge.

If you have ever presided over a foreclosure case, you know that the bank’s filing of the “original” note is an important aspect of any foreclosure lawsuit. In fact, I’m sure you realize the filing of such a note is required for a bank to prevail. See e.g. Downing v. First Nat’l Bank, 81 So. 2d 486 (Fla. 1955) (reversing a final judgment of foreclosure because the bank did not introduce the original note into evidence); Servidio v. U.S. Bank Nat’l Assn., 46 So. 3d 1105 (Fla. 4th DCA 2010) (reversing summary judgment of foreclosure where “the record on appeal does not contain the original note”).

In my experience, it is somewhat common for banks to file something they say is an “original” note, only for my clients and/or I to realize, upon inspection of that note, that it is not actually an original. For instance, I have often seen that “original” notes are obviously just copies (sometimes with the word “copy” prominently displayed on the note itself), even when that note was filed with a “Notice of Filing Original Note.” Suffice it to say that, from my perspective, it is very important for my clients and I to be able to inspect these “original” notes after they are filed in a court file in any particular case. Quite frankly, it is difficult to fairly litigate a case without access to these “original” notes for both sides.

Unfortunately, several clients have recently told me that the clerks in Manatee County are prohibiting access to these original notes, such that my clients have been unable to view and/or inspect the original notes in their own foreclosure cases. Respectfully, this is very troubling. I am not sure why this is – if it’s an administrative issue, a byproduct of electronic filing, or something else. Regardless, I respectfully submit it is imperative that this procedure be changed, as soon as possible, to ensure all litigants can access their own court files and inspect the “original” notes being filed, particularly in their own cases. That is my primary purpose in

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writing this letter – to ask that you change whatever policy/procedure needs to be changed to ensure that my clients and the public at large can view the original notes in pending foreclosure cases (particularly their own cases).

For what it's worth, I have clients in other counties who routinely inspect the original notes in their court files in pending foreclosure cases. Respectfully, homeowners in Manatee County should have the same rights in this regard.

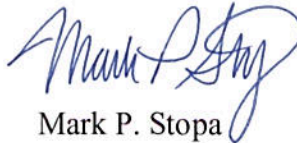
On a related topic, I am curious to know how the judges in your circuit ascertain, given the system of electronic filing in the Twelfth Judicial Circuit, if an "original" note is actually an "original." Rest assured, judge, I've seen many instances where banks filed a Notice of Filing "original" note, only to inspect that "original" and have the banks later admit said note was merely a copy. As such, I respectfully submit that if the judges in your circuit are relying solely on the Notice of Filing and/or electronic review of such documents to make the determination that a Note is an "original," then such procedure is, respectfully, inadequate.

I see this issue as a matter of due process, public access to court documents, and basic fairness. As the Chief Judge of the Twelfth Judicial Circuit, I trust you agree. As such, your prompt attention to this matter is greatly appreciated.

If there is anything I can do to assist in this regard, please let me know. Alternatively, if there is someone else who you think I should contact regarding this issue, please so advise.

Thank you for your attention to this matter.

Sincerely,  
**STOPA LAW FIRM**



Mark P. Stopa

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