

SUPREME COURT OF FLORIDA

No. SC13-684

IN RE: AMENDMENTS TO FLORIDA RULE OF CIVIL PROCEDURE 1.490

COMMENT

Mark P. Stopa, Esq., FBN 550507, respectfully submits this Comment in response to this Court's May 9, 2013 Order, as follows:

1. The undersigned has represented many hundreds of homeowners in residential mortgage foreclosure lawsuits throughout Florida. Based on the undersigned's experience, the undersigned respectfully suggests that this Court consider amending Fla.R.Civ.P. 1.490 to allot a longer time for parties to interpose objections to the magistrate than the 10-day period currently set forth in the Rule.

2. In an ideal world, having ten days from the date an Order is entered to interpose an objection would be sufficient. Unfortunately, the volume of foreclosure cases in Florida's courts have rendered the circumstances at bar less than ideal.

3. The problem, in short, is that it often takes more than ten days for

parties to receive Orders that were entered by lower courts in mortgage foreclosure cases. Delays of this type do not happen in every case, of course, but they happen on a regular basis – frequently enough that the undersigned felt compelled to draft this Comment.

4. The undersigned suspects the reason for the delay in receiving Orders is that the many capable clerks and judicial assistants throughout Florida are unable to send out Orders in a timely manner due to the volume of paperwork with which they deal, delaying the time it takes for parties to receive those Orders.

5. The undersigned's point here is not to cast aspersions. These clerks and court staff are overburdened and underfunded – an unfortunate byproduct of the times in which we now live. That said, regardless of the reason, if parties are regularly not receiving Orders within the ten days allotted for them to object, the problems with the amended version of Rule 1.490 are apparent.

6. The Rule, as currently drafted, gives parties ten days from the “service of the Order” in which to object. If this Order is not received within this 10-day window, then parties will not have been given any opportunity in which to interpose an objection. This would put parties and the courts in the unenviable position of having to adjudicate whether an objection was timely interposed where it was served outside the 10-day limit but immediately upon receipt of the Order. Alternatively, parties would have no chance to object at all, their objections

deemed waived as untimely to no fault of their own.

7. Given his experience, the undersigned fears, candidly but respectfully, that this will be a regular occurrence throughout Florida courts if the Rule is not amended. Undoubtedly, this is an issue this Court should strive to avoid. Plaintiffs and defendants do not agree on much in foreclosure cases, by it seems axiomatic that everyone, including the courts, would not want to have to litigate (particularly on a widescale basis) whether Orders were received soon enough to interpose a timely objection.

8. The undersigned respectfully suggests that this problem can be cured by giving the parties a 20-day period from service of the Order in which to object. If this Court amended the Rule in this manner, parties who intend to object to the magistrate are required to do so quickly (as this Court obviously wants via the amended Rule), while ensuring these parties actually receive the Order and have a fair chance to timely object.

9. The need for a lengthier time to respond is exacerbated by the many consumers who represent themselves in these cases *pro se*. The concept of objecting to an Order of referral to a magistrate is undoubtedly unique to many homeowners. It would be a sad commentary on due process rights if these consumers missed their chance to object because they did not receive the Order until after the 10-day window had passed, then did not object because they thought

their objection would be untimely. A 20-day period in which to object would help ensure all *pro se* homeowners receive the Order and have a fair chance to object before they are deemed to have consented to a magistrate.

10. Requiring the parties to expressly consent to a magistrate appointed has been a long-standing rule of this Court. Before any parties are deemed to have impliedly consented by not having filed an objection, this Court should ensure parties at least had a fair chance to object. Extending the deadline to object to 20 days would accomplish that end.

11. The undersigned apologizes if anything about this Comment is misplaced or procedurally improper. Candidly, this was the undersigned's first opportunity to draft a Comment of this type. That said, the undersigned could not pass at the opportunity to share his concerns with this Court, as experienced on the "ground level," in an attempt to assist the Court in the efficient adjudication of mortgage foreclosure cases.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email to Commission Chair, The Honorable Margaret O. Steinbeck, Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901-3071, msteinbeck@ca.cjis20.org on this 9th day of May, 2013.

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COMMENT