

**SUPREME COURT OF FLORIDA**

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THOMAS D. HALL

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CLERK, SUPREME COURT

BY \_\_\_\_\_

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No. SC09-1460  
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**IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL  
PROCEDURE**

\_\_\_\_\_  
No. SC09-1579  
\_\_\_\_\_

**IN RE: AMENDMENTS TO THE FLORIDA RULES OF CIVIL  
PROCEDURE – FORM 1.996 (FINAL JUDGMENT OF FORECLOSURE)**

**MOTION FOR RE-HEARING OR CLARIFICATION**

Movant, SHAPIRO & FISHMAN, LLP (“the Shapiro Firm”), by and through its undersigned counsel, and pursuant to Fla.R.App.P. 9.330 and Fla.R.Jud.Admin. 2.140(b)(7), hereby files this Motion for Rehearing or Clarification of the Court’s Opinion dated February 11, 2010, and in support, states as follows:

1. The Shapiro Firm is a Florida law firm that primarily represents banks and lenders in real estate foreclosure actions.

*In Re: Amendments To The Florida Rules of Civil Procedure  
Case No. SC09-1460 and SC09-1579  
Motion for Re-Hearing or Clarification*

2. In its opinion of February 11, 2010, this Court accepted several proposed amendments to the Florida Rules of Civil Procedure proposed by the Task Force on Residential Mortgage Foreclosure Cases. In that opinion, this Court approved an amendment to Fla.R.Civ.P. 1.110(b) requiring verification of mortgage foreclosure complaints relating to residential real property.

3. However, as amended, the rule fails to specify who is responsible for verifying the mortgage foreclosure complaints. It is on this very limited issue that the Shapiro Firm seeks rehearing or clarification.

4. Mortgage foreclosure cases are unique in that the holders of the notes are often unfamiliar with the status of the loans and rely upon loan servicers to manage the loans, payments on the loans, and the foreclosure proceedings.

5. Therefore, while the holder of the note may have some limited knowledge in order to verify portions of the complaint, it may not have the necessary knowledge to verify the remainder of the complaint. For example, while the holder of the note may verify that it is the holder of the note, it may not have personal knowledge when the last payment on the note was made or if a default notice was mailed to the client. While the holder of the note may not have that

*In Re: Amendments To The Florida Rules of Civil Procedure  
Case No. SC09-1460 and SC09-1579  
Motion for Re-Hearing or Clarification*

requisite knowledge, the loan servicer would, presumably, have that knowledge and be in a position to verify factual allegations of that nature, but likely will not have personal or direct knowledge of other factual allegations.

6. Furthermore, mortgage notes are frequently assigned between lenders and other investors. Thus, subsequent holders of a note will not have personal knowledge as to the mortgagor's execution of the original note or assignments that occurred prior to its acceptance of the current assignment and consequently will not be in a position to verify those alleged facts in a mortgage foreclosure complaint.

7. It is also unclear whether an attorney or law firm representing a lender can verify a mortgage foreclosure complaint based upon information he/she/it obtained from the client or other parties, including the holder of the note and the loan servicer. The question remains whether an attorney or law firm representing a lender can verify the complaint after diligent review and inquiry into the matter with the various parties holding the necessary knowledge.

8. As currently drafted, there remains uncertainty as to whether a mortgage foreclosure complaint must be verified by the current holder of the note,

*In Re: Amendments To The Florida Rules of Civil Procedure  
Case No. SC09-1460 and SC09-1579  
Motion for Re-Hearing or Clarification*

the loan servicer, the attorney, or some combination of them to be in compliance with the amended rule.

9. Without clarification of the amendment and without uniformity of the manner by which plaintiffs and their counsel will attempt to comply with the rule, clients and their attorneys, despite their endeavoring to act in good faith, will potentially be subject to sanctions for improper verification of filed mortgage foreclosure complaints. Most significantly, the lack of clarification creates uncertainty that will affect the entire foreclosure process, will likely substantially increase litigation and delays, create multiple appellate issues, and will increase the risk of sales of foreclosed properties being set aside for technical violations in the process.

10. This is a critically important issue that should be resolved and clarified now to forestall issues that will ultimately defeat or seriously erode this Honorable Court's intentions and those of the Task Force to establish "...policies, procedures, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties."

*In Re: Amendments To The Florida Rules of Civil Procedure  
Case No. SC09-1460 and SC09-1579  
Motion for Re-Hearing or Clarification*

WHEREFORE, Movant, SHAPIRO & FISHMAN, LLP, hereby seeks this Court's rehearing or clarification of the February 11, 2010 opinion adopting the proposed amendment to Fla.R.Civ.P. 1.110(b).

Respectfully submitted,

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By:



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*In Re: Amendments To The Florida Rules of Civil Procedure  
Case No. SC09-1460 and SC09-1579  
Motion for Re-Hearing or Clarification*

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true and correct copy of the foregoing *Motion for Re-Hearing or Clarification* was served via U.S. Mail upon: Civil Procedure Rules Committee, Committee Chair, Mark A. Romance, 201 S. Biscayne Blvd., Suite 1000, Miami, FL 33131-4327, and Task Force on Residential Mortgage Foreclosure Cases, Chair, Jennifer D. Bailey, 73 W Flagler Street, Ste. 1307, Miami, Florida 33130-4764 on this 25<sup>th</sup> day of February, 2010.

By:

  
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LEORA B. FREIRE