

SCMF-10-0000108

In the Matter of the
FORECLOSURE MEDIATION PILOT PROJECT
Circuit Court of the Third Circuit

ORDER MODIFYING AND EXTENDING THE FORECLOSURE MEDIATION PILOT
PROJECT IN THE THIRD CIRCUIT COURT OF THE STATE OF HAWAII

(By: Recktenwald, C.J., for the court¹)

We have considered (1) our September 29, 2009 Order Establishing the Foreclosure Mediation Pilot Project in the Third Circuit Court of the State of Hawai'i, (2) our October 28, 2010 Order Extending the Foreclosure Mediation Pilot Project in the Third Circuit Court of the State of Hawai'i, (3) the Foreclosure Mediation Pilot Project Report for the period of November 1, 2009 through October 31, 2010 submitted by the Circuit Court of the Third Circuit, (4) the December 22, 2010 Memorandum from the Hawai'i Access to Justice Commission, and (5) our January 27, 2011 Order Extending the Foreclosure Mediation Pilot Project in the Third Circuit Court of the State of Hawai'i. We conclude that the Foreclosure Mediation Pilot Project

¹Considered by: Recktenwald, C.J., Nakayama, Acoba, and Duffy, JJ., and Intermediate Court of Appeals Chief Judge Nakamura, assigned by reason of vacancy.

in the Third Circuit should be extended for one year, but amendments should be made to the project to increase its effectiveness. At the end of the additional year, we will assess the results of the revised procedures. Therefore,

IT IS HEREBY ORDERED that the Foreclosure Mediation Pilot Project is extended to **March 31, 2012**.

IT IS FURTHER ORDERED, notwithstanding anything to the contrary in our September 29, 2009 Order Establishing the Foreclosure Mediation Pilot Project in the Third Circuit Court of the State of Hawai'i or any court rule, and unless otherwise ordered by the Third Circuit Court, that in each foreclosure action filed in the Circuit Court of the Third Circuit seeking foreclosure on borrow-occupied property (hereinafter "Residential Foreclosure Action"):

- (1) the Plaintiff shall file and serve upon the borrower(s) along with the complaint and summons,
 - (a) a Foreclosure Mediation Notice that substantially conforms to the form set forth in Attachment A appended hereto, and
 - (b) a Foreclosure Mediation Request form that substantially conforms to the form set forth in Attachment B appended hereto.
- (2) the Plaintiff's attorney shall file with any request for entry of default, in a form that substantially complies with Attachment C appended hereto, a certification that the Foreclosure Mediation Notice and the Foreclosure Mediation Request were served upon the borrower.
- (3) an eligible defendant-borrower who desires mediation shall complete and file a Foreclosure Mediation Request in a form that substantially conforms to the form

set forth in Attachment B appended hereto.

If the subject property is located in the Districts of Kau, Puna, North Hilo, South Hilo, or Hamakua, the Foreclosure Mediation Request shall be filed and the case heard in Hilo. The Foreclosure Mediation Request shall be filed at the:

Legal Documents Branch/Section of the Third Circuit Court
Hale Kaulike
777 Kilauea Avenue
Hilo, Hawai'i, 96720.

If the subject property is located in the Districts of North Kona, South Kona, North Kohala, or South Kohala, the case will be heard in Kona and the Foreclosure Mediation Request shall be filed at the:

Legal Documents Branch of the Third Circuit Court, Kona Division
Keakealani Building
79-1020 Haukapila Street
Kealakekua, Hawai'i, 96750.

- (4) a defendant-borrower seeking mediation shall mail or deliver a file-stamped copy of the Foreclosure Mediation Request, no later than fifteen (15) days after service of the Foreclosure Mediation Notice, to:
 - (a) the attorney for the plaintiff, and
 - (b) the Honorable Ronald Ibarra, if the case is to be heard in Kona, or the Honorable Greg Nakamura, if the case is to be heard in Hilo.
- (5) upon the filing of the Foreclosure Mediation Request, the deadlines to file and serve the answer to the complaint and to seek relief by dispositive motion are suspended, until further order of the circuit court.
- (6) the legal documents branch or section shall forward the filed Foreclosure

Mediation Request to the appropriate judge.

- (7) the plaintiff's attorney shall, within ten (10) days after the filing of the Foreclosure Mediation Request, schedule a pre-mediation conference with the judge and shall provide notice of the conference to the defendant-borrower.
- (8) all parties shall attend the pre-mediation conference in person with the judge unless authorized to appear by telephone.
- (9) the judicial clerk shall monitor the process and inform the judge of non-compliance.
- (10) the judge shall order appropriate consequences for non-compliance.
- (11) at the pre-mediation conference the judge shall determine whether the case is appropriate for mediation, and should, among other factors,
 - (a) consider whether the primary borrower has resided in the residence for one (1) year immediately prior to the foreclosure proceedings,
 - (b) consider the borrower's ability to pay in light of the borrower's current income and other sources of revenue, and
 - (c) ask the plaintiff if there are other reasons for not referring the case to mediation.
- (12) if mediation is denied, the judge's Order Denying Mediation shall
 - (a) set the time for the defendant to file and serve an answer to the complaint and the time for filing any dispositive motions,
 - (b) include reasons for the denial, and

- (c) be filed and a filed copy shall be forwarded to the Third Circuit Program Specialist.
- (13) if mediation is ordered, the judge shall schedule a status conference in forty-five (45) days to address the status of the mediation. The status conference may be held by telephone conference.
- (14) an Order Granting Mediation shall
 - (a) identify the plaintiff bank's representative by position, and the bank's representative and the bank's attorney shall be present at the mediation with full authority to settle, provided the Third Circuit Court may allow a party's representative or attorney to appear by telephone or other electronic means,
 - (b) instruct the defendant-borrower to produce financial documents (similar to the documents required to obtain a loan) or other documents the mediator requests, and
 - (c) be filed and a filed copy shall be forwarded to the Third Circuit Court Program Specialist.
- (15) if the case is to be mediated, the court shall appoint a mediator and forward copies of the complaint, summons, and Foreclosure Mediation Order to the mediator.
- (16) if the mediation is successful, the parties shall either
 - (a) prepare and file a written settlement with the court, or
 - (b) schedule a hearing to place the settlement on the record.
- (17) if the mediation is unsuccessful, the mediator shall send a report to the court.

- (18) upon completion of the mediation,
- (a) the judge's clerk shall submit a report of the result of the mediation to the Third Circuit Court Program Specialist, and
 - (b) the court shall issue an Order Discharging the Mediator and setting a time to answer the complaint.

IT IS FURTHER ORDERED that the Third Circuit Court Program Specialist shall write the Foreclosure Mediation Pilot Project report required by this court and the Third Circuit Court shall submit the report to this court no later than March 1, 2012.

IT IS FINALLY ORDERED that this order shall not apply to cases ordered to mediation pursuant to Rule 12.2 of the Rules of the Circuit Courts of the State of Hawai'i.

DATED: Honolulu, Hawai'i, February 10, 2011.

FOR THE COURT:

MARK E. RECKTENWALD
Chief Justice

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
STATE OF HAWAII

Case Name: _____

Civil No: _____

FORECLOSURE MEDIATION NOTICE

You have been served with a foreclosure complaint that could cause the loss of your home.

The Court has a **Foreclosure Mediation Pilot Project** to assist parties to resolve foreclosure cases. You are eligible to participate in mediation under this Program if:

- (1) **you are the borrower or co-borrower, and**
- (2) **you occupy the property as your primary residence.**

Foreclosure mediation is a process in which a neutral mediator assists parties in trying to reach a voluntary agreement to avoid foreclosure. To help you prepare for mediation, you should consult with an attorney and with a HUD-certified counseling agency (which you can find by calling 1-888-995-4673 and/or going to www.995hope.org or www.gov/offices/hsg/sfh/hcc/hccprof14.frm). You may also bring your attorney to the mediation.

To participate in the Foreclosure Mediation Pilot Project, no later than 15 days after you were served with this Notice, you must complete the Foreclosure Mediation Request attached and file these two documents (original and 3 copies) at:

Legal Documents Branch/Section
Circuit Court of the Third Circuit
Hale Kaulike
777 Kilauea Avenue
Hilo, HI 96720

Attachment A
Foreclosure Mediation Notice

If the property is located in the Districts of Kau, Puna, North Hilo, South Hilo, or Hamakua, and the case will be heard in Hilo; or at:

Legal Documents Branch
Third Circuit Court
Kona Division
Keakealani Building
79-1020 Haukapila Street
Kealahou, HI 96750

If the property is located in the Districts of North Kona, South Kona, North Kohala, or South Kohala, and the case will be heard in Kona.

You must immediately mail or deliver a file-stamped copy of these two documents to the Plaintiff's attorney, _____, whose address is _____ and to:

The Honorable Greg Nakamura
Third Circuit Court
Hale Kaulike
777 Kilauea Avenue
Hilo, HI 96720

If the case is to be heard in Hilo;

or to:

The Honorable Ronald Ibarra
Third Circuit Court
Kona Division
Keakealani Building
79-1020 Haukapila Street
Kealahou, HI 96750

If the case is to be heard in Kona.

A conference will be held with the Judge to consider the Mediation Request. You must attend the conference.

IN THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT
STATE OF HAWAII

FORECLOSURE MEDIATION REQUEST

Your Name _____

Address _____

Home Phone _____ Cell Phone _____

Work Phone _____ Email address: _____

Mailing Address: _____

I request foreclosure mediation in my case and certify that I am the borrower or co-borrower in this case and I occupy the property referenced in this case as my primary residence.

Signature

Print Name

Date Signed

Attachment C

Certificate of Service of Foreclosure Mediation Notice and Request

**IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII**

CERTIFICATION OF SERVICE

The undersigned hereby certifies that true and correct copies of the Foreclosure Mediation Notice and the Foreclosure Mediation Request were served along with the complaint on the defendants.

Defendant: .

Plaintiff

Attorney for the Plaintiff

Dated: _____