

PART RULES

I. MOTIONS

- A. On submission, generally. Appearance required only when there is a writing -- OTSC, letter, or interim order -- directing appearance by counsel and/or parties.
- B. One month automatic adjournment of No-Opp motions.
- C. Affidavit of service:
 - 1. Copy must be provided with all motions.
 - 2. CPLR §308(2) – party accepting process must be fully identified with respect to name, description and relationship to the defendant.
 - 3. CPLR §308(4) – due diligence requires at minimum 3 attempts (on dates prior to date of affixation), at least one of which was during non-work (and non-travel) hours or weekend.
- D. Summary Judgment – motions must be made within 120 days following certification, unless otherwise directed by the Court.
- E. All motions pertaining to the same case will generally be adjourned to the date of the last-filed motion and will be considered and determined contemporaneously.
- F. No discovery motions may be filed without leave of the Court. Counsel must attempt to resolve the issue, if necessary in a telephone conference with the Court before filing motion. “Consistent with **Uniform Rules for Trial Courts §202.7**, no discovery motions may be submitted unless there is an initial conference with the Court by telephone or otherwise, and this Court makes a determination that it is appropriate to submit same.”
- G. Adjournments
 - 1. On consent: Call the court clerk (571-2956) to request adjournment. Fax letter to Court and all parties advising of consent adjournment and new date. Such adjournment will be granted only if the matter is not beyond standards and goals.
 - 2. Without consent: Must apply to the Court, upon notice to all parties. Conference call or in-court appearance required.

II. CONFERENCES

- A. All counsel must come with full knowledge and be prepared to discuss the merits of the case at all conferences.
- B. At certification, counsel must appear with full knowledge of the case and authority to settle (or state that the case is no-pay or that injunctive relief is sought

and no resolution is available).

- C. No adjournments on consent, except with court approval and within the certification deadline established according to DCM standards and goals.
- D. NOI must be filed within the period of time following certification as set forth in the CPLR or Uniform Court Rules (currently 90 days).

III. TRIAL

- A. Motions in Limine must be made before commencement of trial.
- B. Proposed jury verdict sheet and charges must be submitted before conclusion of 2nd day of trial, unless leave of Court is granted.

IV. MISCELLANEOUS

- A. All counsel must provide e-mail and fax addresses of the office utilized by counsel which is closest to Mineola, NY.
- B. In all matters, attorneys for the parties are required to have knowledge of such matter and authority to resolve issues of the claim or defense. If discussions arise, there will be justified positions articulated in conference by counsel for each party and the pro se party, if applicable. No ad hominem attacks are permitted and the conference shall proceed with civility as contemplated by the Uniform Court Rules, New York Rules of Professional Conduct, and the NYS and American Bar Association Rules of Conduct.

Effective: October 7, 2011

Hon. F. Dana Winslow

PART RULES-FORECLOSURES

Consistent with the Administrative Order of the Chief Administrative Judge of the Court, dated March 2, 2011, effective November 18, 2010, nunc pro tunc, the agreement reached between the United States Attorney for the Southern District of New York and Steven Baum PC on October 6, 2011, and consistent with the determinations and Short Form Orders of this Part, the following is required in order to proceed with an action for foreclosure in this part.

1. Counsel appearing for the named petitioner or plaintiff (“Counsel”), as well as the law firm representing, of record, such petitioner or plaintiff (“Firm”), shall present proof of service of the foreclosure documents on all parties pursuant to CPLR §308(1), (2) (4) or 311 in accordance with these Part Rules. If service is made pursuant to CPLR 311, BCL service will not be accepted by the Court.
2. Counsel or Firm shall file no pleading or motions or applications asserting that its client is the owner, holder or servicer of a mortgage and note unless it: (i) has reviewed the original promissory note in question; or (ii) has received a copy of the promissory note from its client or document custodian accompanied by a notarized affidavit signed by the client or document custodian attesting that upon the affiant’s personal review the client or document custodian has actual or constructive possession of the original promissory note and that the copy is a true and correct copy of the original (“Affidavit of True Copy”); or (iii) in a case where the original note has been lost, has received an executed affidavit from its client attesting to that fact and describing the due diligence procedures that were followed in an effort to search for the original note, and signed by the person who conducted or supervised the search (“Lost Note Affidavit”). Counsel shall reference review of the original note, Statement of True Copy, or Lost Note Affidavit in pleadings or subsequent applications or motions before this Court and, if there are any changes based on newly discovered facts, state the basis for the change, and affirm the accuracy thereof.
3. When an assignment of mortgage is necessary to properly assert standing in any mortgage foreclosure action, Counsel and the Firm shall ensure that the assignee of that assignment is the latest holder of the promissory note or its authorized agent by providing proof of same and affirming the accuracy of such proof.
4. Counsel who appears on an application in this part shall be charged with having knowledge and authority to proceed from the client and have the ability to contact the client directly and not through a firm or other entity. Counsel shall affirm the accuracy regarding the alleged delinquency of the account in order to reasonably verify the sums sought and priority claimed in any proposed proof of claims, the lack of equity in the property, if such lack of equity is alleged as a basis for a motion for relief, and the accuracy of the allegations of the relief sought, including but not limited to, any allegations concerning the client’s standing to bring the motion, or the delinquency of the account or the mortgagee chain of title. Counsel or the Firm shall include the

mortgagee chain of title with any application or motion returnable in this Part.

5. With respect to a client of Counsel or the Firm who has entered into a settlement with the Office of the Comptroller of the Currency (“OCC”) concerning servicing standards (“OCC Settlements”), Counsel, in order to ensure that the Firm complies in each mortgage foreclosure action, with the provisions of such OCC Settlements that govern the standards for affidavits and documentation used in mortgage foreclosure actions, shall present proof of same. Counsel shall not, in the course of its representation of any client, take any action inconsistent with the terms of an applicable OCC Settlement.
6. Counsel and Firm shall not permit anyone employed by them to execute any assignment of a mortgage as an officer, director or employee, agent or other representative of MERSCORP, Inc. and/or Mortgage Electronic Registration Systems, Inc.
7. Counsel and Firm shall have full authority to enter into a loan modification and shall have the telephone number of an officer or individual employee of the Client authorized to amend any proposed loan modification and be able to contact such person on every appearance in this Part in which the parties knew or should have known that a loan modification was intended to be a matter for consideration.
8. The attorney or Firm representing a mortgagor (“Mortgagor”) shall confirm with the client, the accuracy of any submission on behalf of such client.
9. The Pro Se Mortgagor will be required to attest to the accuracy of submissions at any appearance. Following a financial submission by the Mortgagor or Mortgagor attorney, or prior thereto, Counsel or Firm shall respond within a reasonable time with
 - (A) Acceptance of a proposed loan modification, including a trial modification period;
or
 - (B) Proposed amendment or rejection with the written basis thereof.
10. Any motion for relief from repetitive requests by the Plaintiff or Petitioner for updated financial information from the Mortgagor will be examined to determine whether or not such requests constitute bad faith or sanctionable conduct.
11. Following an agreed upon trial loan modification period and acceptance of same by this Part, Plaintiff, Petitioner, Firm and Counsel are prohibited from any further attempts at collection inconsistent with the trial loan modification agreement.

Effective immediately.

October 11, 2011

F. Dana Winslow