

Good morning. On behalf of the Cuyahoga County Court of Common Pleas, Court Administrator Gregory Popovich, Presiding Judge Eileen A. Gallagher, and Chair of the Foreclosure Committee Eileen T. Gallagher, I would like to thank Representative Foley for inviting me to testify this morning. I would like to share some of the experiences regarding foreclosure mediation that we have seen in Cuyahoga County. I would also like to take this opportunity to weigh in on proposed H.B. 306.

Since the introduction of the Foreclosure Mediation Program on June 24, 2008, in Cuyahoga County, over 4,244 cases have been referred into the Program. Of the cases that have gone through the Program, 54% have reached a resolution. The numbers break down as follows: 410 have settled after referral but prior to any hearing; 75 have been dismissed due to the failure of the Plaintiff/lender to participate in some way; 681 have been sent back to the foreclosure docket due to some failure of the Defendant/property owner; 81 have been stayed due to a bankruptcy filing; and 613 have been found unsuitable at the time of referral. Our Program has conducted 2,686 pre-mediation conferences and 1,404 mediations. We have 436 future pre-mediations scheduled and 515 future mediations scheduled. From January 1, 2009, to date, we have a 55% settlement ratio. Settlement may include a resolution of a loan modification, forbearance agreement, or other repayment plan; or a short sale, deed-in-lieu, or consent to the foreclosure.

The basic structure of the Foreclosure Mediation Program involves the Defendant/property owner submitting a Request for Mediation. Upon referral into the Program all discovery and motion practice is stayed, however the case remains active for Supreme Court reporting purposes. After the case has been accepted into the Program, a preliminary pre-mediation conference is scheduled and conducted within 30 days of referral into the program. At the pre-mediation conference, parties exchange information relevant to the mediation, including the financial information of the Defendant/property owner. After the pre-mediation conference, parties are given time to supplement their mediation materials as necessary, up to 14 days after the pre-mediation conference. A full mediation is scheduled and conducted within 120 days of the date of referral into the Program. At the full mediation all parties must appear in person, including a client representative of the servicer/lender with full authority to settle the case at hand. Any follow-up mediation is scheduled at the discretion of the mediator, but within 30 days of the full mediation. If an agreement is reached at mediation, Plaintiff's counsel is given a date by which the Notice of Dismissal must be filed. At all stages throughout the process, if the Plaintiff fails on any point, the case may be dismissed without prejudice; if the Defendant fails, the case may be returned to the foreclosure magistrate for further proceedings.

We have seen some great successes in Cuyahoga County, but there are still improvements to make. The Court and the Foreclosure Mediation Program has made it a priority to collaborate with HUD-approved housing counseling agencies and also Save the Dream, through the Legal Aid Society of Cleveland. We have even had conversations with members of the General Assembly, including Representative Foley, regarding the collaborative efforts with outside agencies.

Currently, every foreclosure summons and Complaint that is sent out by the clerk's office includes a Request for Mediation and a Notice of assistance through 2-1-1 to the counseling agencies and Save the Dream. As you may hear in later testimony, the newest collaboration between the Court and the counseling agencies will involve housing counselors on-site at the Justice Center, adjacent to the Foreclosure Mediation Program space, during pre-mediation conference days. The Court has worked with the Cuyahoga County Foreclosure Prevention Program, lending support for the project with the goal that it can obtain grant monies for the counseling agencies participating. It is my hope that after an initial face-to-face intake meeting with a housing counselor, a Defendant/property owner will be more inclined to make a follow-up appointment with that housing counselor in preparation for the full mediation. We may even start to see more housing counselors attending mediation as support persons.

The response to the Program from the Plaintiff's bar and client representatives has been varied. Starting out, many from the Plaintiff's bar were skeptical about the Program and its potential effectiveness. I can now tell you, almost a year and a half later, that many of the Program's staunchest critics, are now proponents of mediation. We have achieved this by creating a program that runs efficiently and allows the necessary communication to take place to reach settlement. As I have heard one attorney put it, his clients don't make money unless a property owner is making a payment, so it's in their best interests to participate.

I have read and reviewed H.B. 306, and along with input from the Court Administrator, have some suggestions regarding the current draft.

- Answer: A property owner should not have to file an Answer with the Court to be considered for mediation. Even even the most basic legal process intimidates most property owners, and the Answer requirement would be too prohibitive.
 - A possible alternative would allow for mediation in every foreclosure action, except those based on a lien for delinquent taxes, whereby the Court would schedule a first meeting between property owner and Plaintiff's counsel. If the property owner appeared, at that point suitability for continuing in mediation could be determined based on the financial sustainability, the desire of the property owner and the status of the property (i.e., owner-occupied, rental, or vacant). If the property owner did not appear, the case would be referred back to the active foreclosure docket.
- Stay: The case should not only be stayed for any proceedings pending the filing of the mediation report, but also placed in an inactive status similar to a bankruptcy stay. The effect would be to reduce the external pressures placed on mediation by Courts due to the reporting requirements of the Supreme Court. Currently foreclosure cases are to be heard within 12 months of the

date of filing. With the addition of mediation, that time frame can sometimes go well beyond the 12-month limit, yet still resolve in a workout for the property owner. Creating a framework, which would allow a Court to stay its foreclosure case, would stop the clock from running while a case is in mediation. Perhaps with a stay imposed by the statute, or a response to the General Assembly by the Supreme Court to either change the reporting process on foreclosure mediation cases or extend the number of months in which a foreclosure case must be heard, mediators across the state will have more flexibility to resolve the cases before them.

- The Foreclosure Mediator in each Court could file his/her own report on the number of cases in mediation, to alleviate any of the Supreme Court's concerns about cases getting lost.
- Telephone appearance: In Cuyahoga County, all full mediations are held in person. I believe that this helps to account for our high settlement ratio. The language regarding telephone appearance should be stricken. Telephone appearance may not be prohibited, but it does not need to be expressly allowed by the statute. Doing so may give the Plaintiff's bar more reason to push for telephone appearance, at the possible detriment of Ohio's property owners.
- Right to counsel: 2308.04 (A) indicate that a property owner has a right to be accompanied and represented by an attorney. I do not believe that the legislature intends this to be an absolute, but rather a suggestion to seek legal assistance. As foreclosure mediation is not a criminal matter, there is no absolute right to an appointed counsel from the Court.
- Multiple mediations: I especially like this provision, as often more than one mediation is necessary to complete a workout between two parties.
- Documentation: In Cuyahoga County, the parties involved in foreclosure mediation must supply the Court with necessary documentation to proceed to a full mediation. Allowing the parties to submit the documents between themselves alone does not work, as both parties often fail. Detailing the documents necessary in the statute may allow for greater compliance by the Lender/Service providers as the requirement would be statewide.
 - Plaintiff/lender: Documents that may be requested include, but are not limited to: information regarding previous workouts of the property owner, the loan origination documents, the applicable pooling and servicing agreement (or the website address for the information), the name of the servicer of the loan, and the lender's required Net Present Value test under HAMP.

- Defendant/property owner: Documents that may be requested include, but are not limited to: current proof of income statements, including pay stubs, profit and loss statements, unemployment compensation income, and social security income, bank statements, two previous year tax returns, a signed 4506-T form, current utility statements showing proof of usage and property mailing address, proof of rental income, including lease agreements, a detailed hardship letter, and any other supporting documentation regarding the financial status of the property owner.
- Representation: It should be clear that in Section 2308.05 (D), representation refers to legal representation. Otherwise, any support person is welcome to attend mediation with a property owner, but only the property owner or counsel may negotiate on the matter. Allowing otherwise opens the support person up to potential unauthorized practice of law complaints.
- Dismissal: It should be clear that in Section 2308.05 (E), dismissal relates to the claims of the filing party alone, not those that may rightly be pending due to the filing of Cross-Claims by Third Party Defendants, or Counter-Claims brought by the Defendant/property owner.
- Report: The filing of a mediator report has caused some concern for mediators, as the Uniform Mediation Act directs that all mediations are confidential. I believe that the report is necessary, and that good faith negotiations in foreclosure mediations are critical. However, we must be careful to restrict the reporting to only foreclosure cases so we do not allow a slippery slope to similar reporting in other cases.

In general, a mandatory mediation bill would be a good thing for the State and its property owners. However, when drafting the bill it is also important to remember the varied resources that each County has available. Even with an up to \$500.00 fee, it may not be enough to absorb the cost of mediation. The use of the word “shall” does not leave much room for a Court to exercise discretion, flexibility or creativity to best suit its needs and resources. The same would be said for the rigid time guidelines proposed in the bill, for hearing within 60 days, and filing of a mediator’s report in 14 days. As it stands now, in Cuyahoga County we first hear a case in 30 days, but not every County can operate in this way.

Thank you for this opportunity to share the Cuyahoga County Court of Common Pleas’ thoughts on H.B. 306.