



EDWARD J DAUBER

March 28, 2011

VIA EMAIL AND U.S. MAIL

Hon. Mary C. Jacobson, P.J.Ch.
Mercer County Civil Courthouse
210 South Broad Street, 5th Floor
P.O. Box 8068
Trenton, New Jersey 08650

**Re: In the Matter of Residential Mortgage Foreclosure
Pleading and Document Irregularities
Docket No.: F-059553-10**

**Letter Brief Submitted in Opposition to Seton Hall Center for Social Justice's Motion
to Intervene**

Dear Judge Jacobson:

Please accept this letter brief in lieu of a more formal brief in response to the motion to intervene filed Friday, March 25, 2011, by the Seton Hall Center for Social Justice ("Seton Hall"). For the reasons detailed below, this office opposes the motion to intervene.

This office incorporates by reference its Letter Brief submitted on even date in opposition to the motion to intervene filed by Legal Services of New Jersey. This office respectfully submits that Seton Hall's motion to intervene should be denied for the same reasons detailed in this office's opposition to Legal Services' motion to intervene. We address herein additional arguments raised by Seton Hall.

Seton Hall expresses the concern that the submissions that the Special Master will receive will still not be reliable because of “structural problems” relating to underlying software used to generate the foreclosure data. Brief in Response to the Recommended Stipulation (“Seton Hall Brief”) at 5. Seton Hall cites certain authority in support of the argument that the LPS system does not meet the business records exception of *N.J.R.E.* 803(c)(6). Seton Hall misunderstands both the quality of the information required to be initially provided to the Special Master and the powers of the Special Master to ensure that the processes being used are indeed reliable.

Without repeating them in detail here, Paragraph 4 of the Recommended Stipulation sets forth both the questions that must be answered to the Special Master’s satisfaction before he will find that a Prima Facie Showing has been made and lists seven categories of information which should be “includ[ed]” in the information presented. Rec. Stip ¶ 4. With regard to both the questions and the categories of information, “Business Records,” defined in the same way as set forth in the Rules of Evidence, are required. *Id.* ¶ 4 A

Furthermore, the types of information that the Special Master may require is not limited by the items set forth in Paragraph 4 Paragraph 6 of the Recommended Stipulation specifically provides that the Special Master may request additional information if he determines that such is necessary for the required Prima Facie Showing. In addition, Paragraph 2 gives the Special Master the right to exercise any powers “necessary or attendant” to those enumerated in the Recommended Stipulation.

Similarly, with respect to the Performance Review, the Special Master has the powers necessary to determine whether or not the processes outlined in the Prima Facie Showing are being

followed *Id* ¶ 7 These powers are not limited in the way suggested by Seton Hall Indeed, if the Special Master determines that the processes are not properly being followed, he can recommend suspension of the particular Respondent's uncontested residential mortgage foreclosure actions until he is satisfied that they are being followed. *Id*

Finally, Seton Hall urges the Judiciary not to rely on others for a full investigation of the foreclosure crisis and for monetary penalties because "[n]o one else is, or is likely to, conduct a serious investigation" and "the current proceeding by all fifty state attorneys general and several federal agencies ... is ... avoiding additional serious inquiry into defective foreclosure documentation practices " Seton Hall Brief at 7. As stated in this office's response to the Legal Services' motion to intervene, given the Judiciary's constitutional role and its limited resources, it is difficult to conceive of a single state judiciary being in a better position to conduct such an investigation than all fifty of the state attorneys general and the various federal agencies

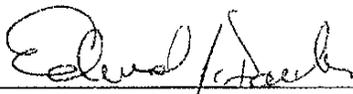
CONCLUSION

For the foregoing reasons, this office respectfully requests that Your Honor deny the motion to intervene of the Seton Hall Center for Social Justice This office would have no objection, however, to Seton Hall's motion papers being referred to Judge Williams in his capacity as Special Master, so that, should there be any information contained therein that is relevant to his undertaking, Judge Williams would be able to give it appropriate consideration.

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Respectfully submitted,

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