



EDWARD J DAUBER

March 29, 2011

VIA ELECTRONIC FILING 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 Motion to Intervene Filed by Jyll S. Jakes

Dear Judge Jacobson:

Please accept this letter brief in lieu of a more formal brief in response to the motion to intervene filed Monday, March 28, 2011, by Jyll S Jakes. For the reasons detailed below, this office opposes Ms. Jakes' motion to intervene.

This office incorporates by reference its Letter Briefs submitted on Monday, March 28th in opposition to the motions to intervene filed by Legal Services of New Jersey and the Seton Hall Center for Social Justice. This office respectfully submits that Ms. Jakes' motion to intervene should be denied for the same reasons detailed in this office's opposition to Legal Services' and Seton Hall's motions to intervene. We address herein the additional issues raised by Ms Jakes' motion

I. MS. JAKES' MOTION SHOULD BE DENIED BECAUSE IT IS UNTIMELY AND BECAUSE MS. JAKES' INTERVENTION WOULD BE BEYOND THE SCOPE OF THE DECEMBER 20th ORDER TO SHOW CAUSE

First, Ms. Jakes' motion to intervene is untimely. This office received Ms. Jakes' motion by fax at approximately 3:30 p.m. on Monday, March 28th, with the hearing in this matter being scheduled for 2:00 p.m., Tuesday, March 29th. This matter has been pending since December 20, 2010, and the March 29th hearing date itself has been scheduled for over a month. Ms. Jakes has had ample time and opportunity to seek intervention and did not do so until the afternoon before the hearing. As such, Ms. Jakes' motion to intervene is untimely under the Court Rules.

Second, Ms. Jakes' motion misapprehends the purpose of the December 20th Order to Show Cause and the proceeding it was designed to generate. The purpose of the Order to Show Cause was to create a process whereby the Judiciary could deal directly with the mortgage industry's largest servicers and foreclosure plaintiffs and regain the confidence in the integrity of the documents being filed with the court that had been lost by the revelation of "robo-signing" incidents and practices. The Order to Show Cause was not meant to be a parallel proceeding or an additional proceeding for individual borrower-defendants and foreclosed homeowners. If the Order to Show Cause bore such a wide scope, then every single one of the tens of thousands of foreclosed New Jersey homeowners like Ms. Jakes would be free to intervene in this matter individually, making the resulting proceeding entirely impractical and hopelessly unmanageable. Thus, as a practical matter, Ms. Jakes' individual intervention is neither contemplated nor even workable within the scope of the December 20th Order to Show Cause.

Ms. Jakes also seeks intervention “to protect ... to the extent authorized by the court the interests of others similarly situated” under the Court’s class action Rules. Jakes Cert. ¶ 40; Notice of Motion. As noted in this office’s letter brief in opposition to Legal Services’ motion to intervene, numerous such class action lawsuits are already pending in New Jersey, as well as throughout the nation, and are a better vehicle for the vindication of the rights of foreclosed homeowners as a class. Nor has Ms. Jakes asserted the necessary predicates for a class action.

II. THE SPECIFIC OBJECTIONS MS. JAKES RAISES TO THE RECOMMENDED STIPULATION DO NOT WARRANT INTERVENTION

Ms. Jakes provides several numbered objections to the Recommended Stipulation submitted by this office on March 18, 2011. None of these objections, however, warrant Ms. Jakes’ intervention in this matter. Ms. Jakes’ objections generally either misconceive the purpose of the December 20th Order to Show Cause or misstate the scope of the Special Master process set forth in the Recommended Stipulation.

Specifically, Ms. Jakes’ objections 1, 8, 9, 10, and 14 all misapprehend the scope of the Order to Show Cause. Objection 1 argues that the Recommended Stipulation does not do enough to address past practices. Jakes Brief at 2-3. However, as this office noted in March 18th Letter Brief and its opposition to the intervention motions filed by Legal Services and Seton Hall, this proceeding is merely one of numerous oversight processes being undertaken all around the country to address problems in the foreclosure system. Indeed, in New Jersey alone, there remains open the matter of the emergent amendments to *Rules* 4:64-1 and 4:64-2, which themselves envision a retrospective review of pending foreclosure cases and correction of prior erroneous filings. Thus, action is being

taken in other avenues even within the State of New Jersey to address the subject matter of Ms Jakes' objections. In addition, with respect to uncontested foreclosures, the Recommended Stipulation does in fact relate to all such foreclosures pending as of December 20, 2010 contained in the Respondents' Servicer Portfolios. *See* Rec. Stip. ¶¶ 5, 7. These foreclosures cannot go forward until the requisite Prima Facie Showing has been made, the required affidavit has been filed, and the Court Rules then in effect have been complied with.

Furthermore, with respect to Objections 9 and 10, Ms. Jakes seems to imply that the Recommended Stipulation should include a provision whereby Respondents and their officers are found to have engaged in fraud. Jakes Brief at 5-6. This Order to Show Cause is not the forum for that type of relief. Basic notions of due process require that such interests be adjudicated in individual proceedings as part of an adversarial process. Additionally, as noted by this office in its prior submissions, there are numerous executive investigations pending all over the country at the state and federal level which may themselves ultimately lead to penalties, sanctions, monetary settlements, or even criminal prosecutions and should not be needlessly duplicated here. The Judiciary is not suited to undertake such investigations and certainly would not have the resources to do so.

Additionally, as noted, numerous of Ms. Jakes' objections are premised on a misunderstanding of the scope of the Recommended Stipulation. Specifically Objections 2, 4, 7, and 11 all raise concerns that are already addressed by the Recommended Stipulation. For example, in Objection 2, Ms. Jakes argues that the Special Master's proposed powers to gather information from the Respondents are too limited. Jakes Brief at 3. However, the types of information that the Special

Master may require is not limited by the items set forth in Paragraph 4 of the Recommended Stipulation. 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

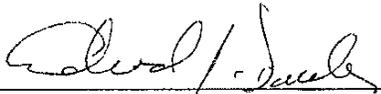
As another example, in Objections 7 and 11, Ms. Jakes misstates that the Special Master process will be based solely on certifications and will not involve any in-person interviewing or testimony before the Special Master. Jakes Brief at 6. This is simply not the case. In addition to the provisions noted above, Ms. Jakes overlooks the powers and discretion given the Special Master in the Performance Review phase of the Special Master process set forth in the Recommended Stipulation. Rec Stip. ¶ 7. This phase allows the Special Master to review sample filings in both pending and new residential mortgage foreclosure cases, request supplemental information if unsatisfied, interview relevant Respondent personnel, and even recommend to Your Honor that any particular Respondent’s prosecution of uncontested residential mortgage foreclosure matters be suspended until the Respondent satisfies the Special Master’s concerns about its processes. *Id* Thus, the Special Master process set forth in the Recommended Stipulation provides significant ability and opportunity for the Judiciary to attain comfort over Respondents’ respective document execution practices

CONCLUSION

For the foregoing reasons, this office respectfully requests that Your Honor deny Jyll S Jakes' motion to intervene in this matter. This office would have no objection, however, to Ms Jakes' 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.

Respectfully submitted,

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