

3. Actual false statements about when and how a loan has been transferred since its origination.
4. False identification of signatory.
5. Forged signatures.
6. Execution outside the presence of a notary, who nevertheless notarizes the signature.

On a national scale these kinds of irregularities in preparation of documents to support mortgage foreclosures manifested themselves in a practice that became known as “robo-signing,” where a person would sign hundreds of affidavits or certifications a day with no personal knowledge of the contents of any of them. In many instances the underlying facts asserted in the documents submitted to support foreclosures may have actually been true but because of the false representations concerning the process by which the documents were created, there was no way for courts to be able to separate assertions that were accurate from those that were not.

If each uncontested mortgage foreclosure were to be heard by a judge with the presentation of oral testimony, the judge could cross-examine the witnesses to determine the reliability and veracity of testimony presented. However, uncontested foreclosures represent over 90% of all residential mortgage foreclosure proceedings pending in New Jersey and presentation of oral testimony is not a sensible or practical way to resolve the thousands of foreclosures filed every year. Therefore courts have traditionally relied upon the truthfulness of affidavits or certifications submitted to support a mortgagee’s request for a judgment of foreclosure. When confidence in the reliability of such submissions is lost, the court must be persuaded by the mortgagee that it has processes and procedures in place that will restore the necessary confidence to justify the court’s reliance on documents submitted.

Toward that end, on December 20, 2010, General Equity Judge Mary C. Jacobson, designated by the Chief Justice to oversee uncontested foreclosure cases in the State, entered an Order to Show Cause directed at: Bank of America, d/b/a BAC Home Loan Servicing, LP; Citibank, N.A. and Citi Residential Lending, Inc.; GMAC Mortgage, LLC; JPMorgan Chase Bank, N.A. and Chase Home Finance LLC; OneWest Bank, FSB; and Wells Fargo Bank, N.A. (collectively, “Respondents”) requiring each to show cause why the processing of pending uncontested residential mortgage foreclosure actions filed by them should not be suspended. While the Order to Show Cause did not order an immediate suspension of foreclosure processing for the Respondents, *de facto* there has been such a suspension, either because Respondents or some of them had earlier ceased processing foreclosures in New Jersey on their own while attempting to address the “robo-signing” issue or because the effect of the Rule Amendments, as worded in the December 20th emergency revisions, was to make it impractical or unfeasible for Respondents to pursue foreclosures.

The six Respondents were selected specifically for the Order to Show Cause for two reasons. First, the six Respondents account for a large majority of the foreclosure actions in the New Jersey courts. Any Judiciary-wide correction of the “robo-signing” issue in the State of New Jersey must logically begin with these six Respondents. Second, the six Respondents were selected for inclusion in the Order to Show Cause because there has been deposition testimony and/or other materials forming a public record in various jurisdictions across the United States indicating that each of the six Respondents has encountered “robo-signing” problems concerning their foreclosures in the past.

In response to the Order to Show Cause, Respondents and court appointed counsel entered into discussions resulting in a Consent Order. That Order appointed a Special Master

charged with responsibility to conduct a review to determine whether each of the respective service providers has processes and procedures in place which, if adhered to, will ensure that the information set forth in affidavits/certifications submitted in foreclosure proceedings is personally reviewed by an affiant authorized to act on behalf of the plaintiff in the foreclosure action and that each affidavit or certification submitted is properly executed and is based upon knowledge gained through a personal review of relevant records which are made in the regular course of business as part of the regular practice of that business to make them. The review also contemplated a process to verify that the respective servicers are, in fact, adhering to those processes and procedures following the resumption of residential mortgage foreclosure activities in New Jersey.

While there has also been much public discussion and litigation concerning complex issues relating to the standing of mortgagees and loan servicers to foreclose, including issues flowing from the securitization of mortgages, assignments of mortgages, and the utilization of Mortgage Electronic Registration Systems, Inc. ("MERS"), these broad issues of standing, assignments, and MERS, though important, are beyond the scope of the Special Master's charge. The focus of the Consent Order entered by Judge Jacobson is on Respondents' business practices and procedures that generate the sworn documents that are submitted to the Judiciary in support of final judgments and other relief requested in uncontested foreclosure cases. Nothing in this report is intended, nor should be construed in any way, to prejudge or comment on issues concerning a plaintiff's standing to foreclose in any individual case.

THE REVIEW PROCESS

The review by the Special Master is systems oriented and not intended to deal with individual pending cases, although selected individual cases may be reviewed as part of the process. The first phase of the review process, involving an examination of the respondents' business practices, required that each respective servicer make a prima facie showing that it has processes and procedures in place which, if adhered to, will assure the Judiciary that it can rely on the veracity of representations contained in documents filed by the servicer. Upon a determination that such a showing had been made the Judiciary would resume processing uncontested foreclosure cases filed by the servicer. The second phase, to be commenced later, will involve a monitoring process to ensure that the servicers' processes and procedures are effective and, in fact, are being followed.

In determining whether a respondent had made the requisite prima facie showing the inquiry focused on three major areas:

1. Respondent's authority to pursue the foreclosure proceeding.
2. The admissibility in evidence of data from Respondent's records.
3. The reliability of Respondent's document preparation and execution process.

As part of the inquiry in the first phase of this work, each Respondent was directed to respond to the following requests for information about its business processes:

(a) If the Respondent is acting on behalf of a mortgagee, but is not the mortgagee itself, provide examples of the source of the Respondent's authority to act, including providing representative samples of documentation evidencing the authority to act on behalf of mortgagees;

(b) Does the Respondent have a record keeping system of Business Records that provides accurate up to date information on the payment history and status of the loan? If so, describe the system;

(c) Describe the Respondent's case processing steps for the review of information contained in, and the execution of, affidavits/certifications submitted in support of foreclosure proceedings;

(d) Has the Respondent established specific procedures for staff to ensure that the information set forth in affidavits/certifications submitted in foreclosure proceedings is based on a personal review of Business Records? If so:

- (i) Describe the procedures;
- (ii) Produce all documents evidencing establishment of the procedures;
- (iii) Produce samples of all documents or screens reviewed by staff in the affidavit/certification of indebtedness process; and
- (iv) Provide the numerical range and average of how much time is spent per loan to review the Respondent's business records and complete an affidavit/certification of indebtedness.

(e) Has the Respondent implemented a training program for its staff to review relevant Business Records and source documents and complete foreclosure affidavits/certifications based on a personal review of such materials? If so:

- (i) Describe the program;
- (ii) Produce copies of all written materials used and screen samples from any powerpoint or other presentations; and
- (iii) Produce a statement that all staff who are preparing affidavits/certifications have received this training.

(f) Has the Respondent established quality assurance procedures to insure that the established procedures for review of relevant source documents and completion of foreclosure affidavits/ certifications based on a personal review of Business Records are followed in each case? If so:

- (i) Describe the procedures; and
- (ii) Produce copies of all documents evidencing establishment of quality assurance procedures.

(g) Does the Respondent have a process for insuring effective and timely communication with foreclosure counsel in connection with the completion and execution of foreclosure affidavits/certifications? If so:

- (i) Describe the process; and
- (ii) Describe the procedures that will enable foreclosure counsel to comply with their duties concerning the completion and execution of

foreclosure affidavits/certifications, under the Court Rules as they are finally adopted by the New Jersey Supreme Court.

After reviewing the documentation submitted, the Special Master and counsel to the Special Master conducted follow-up telephone conferences on a number of occasions with representatives of each respondent to obtain further explanation and clarification of the materials submitted and to request supplemental information. Each respondent provided the clarification, explanation, and supplemental information by way of at least one supplemental certification. If further clarification or supplemental information was required, this was communicated to the respondent through counsel and additional certifications were submitted.

FINDINGS

The initial Prima Facie submission¹ of JPMorgan Chase Bank and Chase Home Financial LLC was accompanied by the affidavit of Michael R Zarro, Senior Vice President in charge of Default Specialty Operations, who is responsible for support, management, and disposition of assets secured by real estate, including the foreclosure process. Mr. Zarro's affidavit provided background information about JPMorgan Chase's mortgage loan servicing operations, as well details concerning: Chase's sources of authority to act as servicer for non-Chase mortgagees; Chase's system of record; its case processing steps and workflow for certifications and affidavits submitted in support of foreclosure proceedings; Chase's training and quality assurance programs concerning foreclosure documents; and Chase's processes for communications with foreclosure counsel. Nineteen exhibits accompanied Mr. Zarro's affidavit, which included: sample

¹ The entire JPMorgan Chase & Co. and Chase Home Finance submission has been filed on the Judiciary website at <http://www.judiciary.state.nj.us/superior/f5955310.htm>

powers of attorney and pooling and servicing agreements, sample foreclosure affidavits and screenshots, foreclosure document execution procedure manuals, training materials, and quality assurance materials.

Thereafter, JPMorgan Chase and Co. submitted a supplemental filing which consisted of an affidavit from Chris Collins, a Vice President of Foreclosure Operations at JPMorgan Chase Bank, N.A. Mr. Collins's affidavit provided additional detail concerning JPMorgan Chase & Co.'s acquisition of former Bear Stearns-related servicing company EMC Mortgage Corporation and the May 2011 merger of Chase Home Finance LLC into JPMorgan Chase Bank, N.A. Mr. Collins also described additional information about Chase's use of third party vendors in its foreclosure case processing, Chase's procedures concerning acceptance of payments after a case has been referred to foreclosure, and Chase's oversight and supervision of, as well as communications with foreclosure counsel. Mr. Collins attached four exhibits to his affidavit, all of which dealt with Chase's acquisition of EMC Mortgage Corporation and the Chase Home Finance LLC merger.

JPMorgan Chase & Co. is a financial services holding company. Respondent JPMorgan Chase Bank NA ("Chase") is a subsidiary of the holding company and a national banking association with branches in 23 states. Chase Home Finance LLC ("CHF"), a former subsidiary of Chase, was a mortgage servicer responsible for the day-to-day management of loan accounts, including handling customer inquiries, collecting and crediting loan payments, reporting and remitting to investors, payment of taxes and insurance, engaging in loss of mitigation efforts with borrowers, and pursuing foreclosure proceedings. Effective May 1, 2011, CHF merged into Chase and Chase is now the servicer of the residential mortgage loans previously serviced by CHF. Chase has certified that all processes and procedures detailed in Chase's submissions in this

matter are unaffected by this merger and any practices referred to as being those of CHF apply equally to Chase.

Chase services loans originated by Chase as well as loans originated and/or owned by other lenders. Chase does not act as a sub-servicer for other servicers. Chase is the servicer on approximately 10,000 loans that are the subject of pending foreclosure proceedings in New Jersey. As of April 1, 2011, Chase acquired the servicing rights to loans previously serviced by EMC Mortgage Corporation. As to those loans Chase will follow the same procedures that it uses to execute all other foreclosure affidavits.

RESPONDENT'S AUTHORITY TO PURSUE FORECLOSURE PROCEEDINGS

The first element of proof in any type of case is to establish that the party initiating the proceeding has authority to ask the court for relief. Respondent is involved herein in its capacity as a mortgage loan servicer. In some foreclosure cases initiated by Respondent it may be servicing its own mortgage loan. But in other cases it may be servicing the mortgage loan of an independent party. For that reason the inquiry began with an examination of Respondent's authority to pursue foreclosure proceedings under the various circumstances in which it appears before the court

There are three types of arrangements by which Chase services loans: (1) loans originated by Chase, (2) loans originated and/or owned by other lenders including Government Sponsored Enterprises, such as Fannie Mae and Freddie Mac, and (3) pools of loans held by private investors in securitized trusts.

For those loans originated by Chase, the authority to proceed will be grounded in the documents evidencing the mortgage loan. In cases where Chase acts as a servicer for a

Government Sponsored Enterprise (GSE) it will do so pursuant to an agreement that incorporates the terms of Guidelines published by the GSE. By way of example, page 801-3 of the Fannie Mae 2010 Servicing Guide Update Part VII and Part VIII, dated April 2010², requires servicers generally to initiate “foreclosure proceedings for a first mortgage loan...30 to 34 days after an acceleration or breach letter is sent upon the completion of the pre-referral account review and after any applicable notice and waiting period under state law is met.” The Servicing Guide, page 801-1, also provides: “A servicer must process foreclosures, conveyances, and claims in accordance with the provisions of the mortgage loan; state law; the requirements of FHA, HUD, VA, RD, or the mortgage insurer; and any special requirements that Fannie Mae may have.” Freddie Mac’s Single-Family Seller/Servicer Guide at Section 66-1 provides that “the Servicer must initiate foreclosure in accordance with this chapter when there is no viable alternative to foreclosure.” The Guide also requires the Servicer to manage the foreclosure process to acquire title to the property in a cost-effective and efficient manner.

When servicing mortgage loans for a Government Sponsored Enterprise the GSE usually requires that the foreclosure proceeding be initiated in the name of the servicer. For this reason Chase will obtain possession of the note prior to initiating the proceeding. Thus its authority to prosecute the foreclosure action is also grounded in the fact that it is the holder of the note.

With regard to the third category of loans, loans held by private investors in securitized trusts, Chase provided three sample Pooling and Servicing Agreements. The first sample Agreement contains the following provision:

The Servicer shall service and administer the Mortgage Loans and shall have full power and authority...to do any and all things which it may deem necessary or desirable in connection with such servicing

² The Fannie Mae 2010 Servicing Guide Update Part VII and Part VIII is available at <https://www.efanniemae.com/sf/guides/ssg/svcg/svc042810.pdf>.

and administration, all in accordance with Accepted Servicing Practices.

The Agreement further provides:

The Servicer, on behalf of the Trustee, shall foreclose upon or otherwise comparably convert the ownership of Mortgaged Properties (or stock allocated to a dwelling unit, in the case of a Co-op Loan) securing such of the Mortgage Loans as come into and continue in default and as to which no satisfactory arrangements can be made for collection of delinquent payments pursuant to Section 5.07....

The Agreement also has attached to it, as an exhibit, a Form of Special Servicing and Collateral Fund Agreement that states, in relevant part, as follows:

In connection with any Mortgage Loan identified in a report under Section 2.01(a)(1)(B), the Purchaser may elect, for reasonable cause as determined by the Purchaser, to instruct the Company to proceed with the Commencement of Foreclosure as soon as practicable. Such election must be evidenced by written notice received by the Company....

The second sample agreement contains the same sections as those cited above.

The third sample agreement contains the following provisions, in relevant part:

The Servicer shall service and administer the Mortgage Loans, as servicer, on behalf of the Trust Fund and in the best interests of and for the benefit of the Certificateholders (as determined by the Servicer in accordance with Accepted Servicing Practices) in accordance with the terms of this Agreement, the Mortgage Loans and Accepted Servicing Practices..

...[T]he Servicer...is hereby authorized and empowered...to institute foreclosure proceedings or obtain a deed-in-lieu of foreclosure....

As further proof of its foreclosure authority, Chase has supplied three sample powers of attorney. The first sample includes among the powers granted, the following:

With respect to a Mortgage or Deed of Trust, the foreclosure, the taking of a deed in lieu of foreclosure or the completion of judicial or non-judicial foreclosure or termination, cancellation or recession of

termination, cancellation or rescission of any such foreclosure, including, without limitation, any and all of the following acts:

- a. the substitution of trustee(s) serving under a Deed of Trust, in accordance with state law and the Deed of Trust;
- b. the preparation and issuance of statements of breach or non-performance;
- c. the preparation and filing of notices of default and/or notices of sale;
- d. the cancellation/rescission of notices of default and/or notices of sale;
- e. the taking of a deed in lieu of foreclosure; and
- f. the preparation and execution of such other documents and performance of such other actions as may be necessary under the terms of the Mortgage, Deed of Trust or state law to expeditiously complete said transactions in paragraphs 8.a. through 8.e., above

The other two powers of attorney contain similar language.

Respondent has certified that the categories cited accurately describe the types of cases it has filed with the court in its capacity as a mortgage loan servicer. It has also certified that the examples submitted are representative of its source of authority to prosecute foreclosure proceedings in such cases. For the purposes of this review, Respondent's submission meets the standard of a Prima Facie showing that it has authority to ask the court for relief in the foreclosure proceedings within its portfolio.

ADMISSIBILITY OF DATA FROM RESPONDENT'S RECORDS

An essential element of proof in a foreclosure case is the existence of a note and mortgage and a default on the part of the mortgagor. Most typically the claim of default is based on allegations of non-payment of amounts due on the note. To prove that fact, the servicer of the

mortgage will usually offer proof in the form of a statement of account produced from its records. Such evidence is classified as “hearsay” under our Rules of Evidence. “Hearsay” evidence is considered inherently unreliable and is therefore generally inadmissible in court proceedings. There are exceptions to this rule, however, where circumstances warrant considering “hearsay” evidence as reliable. Evidence Rule 803(c)(6) is one of those exceptions, providing for admissibility of data from business records under the following circumstances:

Records of regularly conducted activity. A statement contained in a writing or other record of acts, events, conditions, and, subject to Rule 808, opinions or diagnoses, made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if the writing or other record was made in the regular course of business and it was the regular practice of that business to make it, unless the sources of information or the method, purpose or circumstances of preparation indicate that it is not trustworthy.

This inquiry has therefore focused on how Respondent maintains the data that it offers as evidence to support its requests for judgments of foreclosure.

Chase uses an electronic record-keeping system known as Mortgage Servicing Package (“MSP”) to maintain and update information concerning, among other things, the status of the loan and payment history. MSP is a commercially available system that is widely used by the mortgage servicing industry. Monetary transactions are posted on MSP in real-time (transactions are batched and updated nightly). MSP also stores data about payments Chase makes on behalf of the borrower, including tax payments and hazard insurance, as well as records of communications with borrowers. Chase relies on the MSP system to store, retrieve, and otherwise access critical loan data for all loans in Chase's Servicer Portfolio, regardless of how Chase came to be servicer of an individual loan or who owns the beneficial interest in the loan.

Chase employs a number of internal and external controls to ensure that the information is MSP is accurate and reliable, including real-time posting of transactions, daily reconciliations, control self-assessment processes, internal audit review, and testing by Chase's external auditor, PricewaterhouseCoopers. Chase also relies on the integrity of its hard copy loan files, most of which are maintained in a secure facility of JPMorgan Chase Custody Services in Monroe, Louisiana. These files typically contain original notes. Images of those hard copy files are maintained on an imaging system.

Most borrowers receive monthly loan statements reflecting, among other items, the unpaid principal balance, interest rate, and the amount of the outstanding indebtedness. Borrowers also receive annual Form 1099 tax statements as appropriate. Escrow accounts for taxes and /or insurance are reconciled at least once per year as required by federal law, and borrowers are provided with annual escrow disclosure statements. Similarly, most borrowers also have access to key information about their loans through Chase.com.

Although Chase uses some outside vendors to assist in the management of defaulted loans and processing of foreclosures, Chase certifies that "there is no ability for the manipulation of core loan records" by these vendors.

In order for information contained in the electronic record keeping system to be admitted in evidence the record has to be made at or near the time of observation by a person with actual knowledge, or from information supplied by such a person, and must be made in the regular course of business as part of a regular practice of that business to make the record. The information in the electronic record keeping system will then be admissible unless the sources of information or the method, purpose or circumstances of preparation indicate that it is not trustworthy.

For the purposes of this review, Chase has met the standard of a Prima Facie showing that data in its record keeping system is entered at or near the time of the transaction recorded as a part of a regular practice to make such records and that there is nothing in the sources of information or the method, purposes or circumstances of preparation to indicate that the data is not trustworthy.

THE RELIABILITY OF RESPONDENT'S DOCUMENT PREPARATION AND EXECUTION PROCESS

Including affiants and quality control personnel, Chase has approximately 400 employees involved in the foreclosure document execution process. Prior to permitting them to execute Affidavits of Indebtedness ("AOIs"), Chase trains all of its document execution employees, including both affiants and the quality control personnel. Chase provides classroom training of 2 5 days for current employees and 10 days for new employees. All document execution employees also take part in lab work in addition to their classroom training. After receiving the classroom and lab training, each employee then executes a "screening certification," which is an AOI that simulates the information and types of conditions and or questions that the employee will encounter in the field. After going through the "screening certification" process, each employee meets one-on-one with outside counsel to confirm their understanding of Chase's document execution processes and practices. In addition, Chase's independent audit group reviews and audits the employees' understanding of the execution process. The training process described applies to all Chase personnel involved in preparing and executing foreclosure certifications. Chase does not use third party vendors in its document review and execution

process; all sworn documents executed by Chase in connection with residential mortgage foreclosures for the Chase Servicer Portfolio are executed "in house" by Chase employees.

The document preparation and execution process begins when Chase's Loan Review Team concludes that foreclosure is appropriate and refers the case to outside counsel. Chase has established a practice that once a mortgage loan is in default and has been referred to counsel for foreclosure, it will not accept partial payments on the loan unless such payments are submitted pursuant to an express agreement between the bank and the mortgagor. If such an agreement is made, further prosecution of the foreclosure will be ended. Upon referral to counsel, documents necessary to pursue foreclosure are transmitted to counsel via LPS Desktop, a commercially available system that facilitates communication between counsel and servicers.

Counsel will then prepare drafts of the documents necessary to initiate and support the foreclosure. Chase has developed its own standardized, state-specific forms for the AOI that it provides to local foreclosure counsel. In preparing the AOI, counsel will populate the caption, leaving the remainder of the document to be completed by the affiant. Counsel transmits the documents to Chase using LPS Desktop.

The AOI is then reviewed and executed by a Chase foreclosure analyst using a 132-step checklist. Using MSP, the affiant verifies all the information as it appears on the AOI. For example, the affiant first verifies the property address and borrower name. Then the affiant verifies the principle balance and reviews the file's foreclosure status as listed on MSP. The affiant reviews the note and mortgage to match the name, address, and loan amount as appearing on the AOI. The affiant then hand writes the following information onto the AOI, either from personal knowledge or from information on the note: affiant's name, borrower(s)'s name(s), affiant's signing authority (*i.e.*, title), original loan amount, property address. Using MSP, the affiant

confirms the mortgage figures on the MSP screen with the note, including the interest rate and the original mortgage amount.

The affiant verifies the "Name to foreclose in" (*i.e.*, investor) on MSP and ensures that it matches the plaintiff listed in the AOI's caption. If the plaintiff is not one of six specified Chase-related entities the affiant will ensure that an appropriate power of attorney is in the file. The affiant also reviews the total amount due on MSP and hand writes it into the AOI. After performing this review the affiant prints the relevant documents from MSP and attaches them to the AOI. The affiant then signs the AOI and gives the completed AOI to Quality Control.

After execution, every AOI is reviewed by a Quality-Check Analyst, who performs precisely the same review of information that the affiant performed to confirm that the information in the AOI corresponds with Chase's business records on MSP. At present, Chase's Quality-Check Analyst team performs this second, mirror review for every AOI that Chase generates. Chase has indicated that the review of 100% of affidavits and certifications will continue until Chase management determines that quality levels are consistently high and support a more streamlined review going forward. At that time Chase intends to use a system of random sampling of the executed AOIs. In addition to this quality control process, executed AOIs will also be subject to sampling by Chase's independent Internal Audit team.

For the purposes of this review, the process described by Respondent's submissions meets the standard of a Prima Facie showing that each certification submitted to the court is reviewed and executed by an authorized person who has been trained in how to understand Respondent's business records and source documents and who has personal knowledge of the content of the relevant records and documents upon which the certification is based. Respondent has also shown, on a Prima Facie basis, that it has a training process and a post-certification review

process to ensure that its established procedures are in fact followed. The process described in these submissions, if followed, could justify reliance by the court on the accuracy of the information contained in certifications submitted to the court by the Respondent. This conclusion should not be deemed as dispositive of issues in any individual foreclosure case, each of which must be determined upon its own facts and record.

RESPONDENT'S OVERSIGHT AND COMMUNICATION WITH COUNSEL

During the period of this review the New Jersey Supreme Court adopted further amendments to Rules 4:64-1 and 4:64-2. The pertinent part of revised Rule 4:61-4 provides;

In all residential foreclosure actions, plaintiff's attorney shall annex to the complaint a certification of diligent inquiry:

(A) confirming that the attorney has communicated with an employee or employees of the plaintiff or of the plaintiff's mortgage loan servicer (i) who personally reviewed the complaint and confirmed the accuracy of its content, as mandated by paragraphs (b)(1) through (b)(10) and (b)(12) through (b)(13) of this rule, based on business records kept in the regular course of business by the plaintiff or the plaintiff's mortgage loan servicer, and (ii) who, if employed by the plaintiff's mortgage loan servicer, (a) identified the relationship between the mortgage loan servicer and the plaintiff, and (b) confirmed the authority of the mortgage loan servicer to act on behalf of the plaintiff; and

(B) stating the date and mode of communication employed and the name(s), title(s) and responsibilities in those titles of the plaintiff's or plaintiff's mortgage loan servicer's employee(s) with whom the attorney communicated pursuant to paragraph (2)(A) of this rule.

The revised Rule 4:64-2 now provides in relevant part:

(c) Time; signatory. The affidavit prescribed by this rule shall be sworn to not more than 60 days prior to its presentation to the court or the Office of Foreclosure. The affidavit shall be made either by an employee of the plaintiff, if the plaintiff services the mortgage, on the affiant's knowledge of the plaintiff's business records kept in the regular course of business, or by an employee of the plaintiff's mortgage loan servicer, on the affiant's knowledge of the mortgage loan servicer's business records

kept in the regular course of business. In the affidavit the affiant shall confirm:

(1) that he or she is authorized to make the affidavit on behalf of the plaintiff or the plaintiff's mortgage loan servicer;

(2) that the affidavit is made based on a personal review of business records of the plaintiff or the plaintiff's mortgage loan servicer, which records are maintained in the regular course of business;

(3) that the financial information contained in the affidavit is accurate; and

(4) that the default remains uncured.

The affidavit shall also include the name, title, and responsibilities of the individual, and the name of his or her employer. If the employer is not the named plaintiff in the action, the affidavit shall provide a description of the relationship between the plaintiff and the employer.

(d) Affidavit. Plaintiff's counsel shall annex to every motion to enter judgment in a residential mortgage foreclosure action an affidavit of diligent inquiry stating: (1) that the attorney has communicated with an employee or employees of the plaintiff or the plaintiff's mortgage loan servicer who (A) personally reviewed the affidavit of amount due and the original or true copy of the note, mortgage and recorded assignments, if any, being submitted and (B) confirmed their accuracy; (2) the date and mode of communication employed; (3) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) or the employee(s) of the plaintiff's mortgage loan servicer with whom the attorney communicated pursuant to this rule; and (4) that the aforesaid documents comport with the requirements of R. 1:4-8(a).

The revisions to the Rules require an examination of Respondent's procedures for oversight and communication with foreclosure counsel. Chase's primary method of communication with foreclosure counsel is through LPS Desktop as previously explained herein. However, Chase's employees are available to counsel via a variety of modalities, including telephone and email. Chase is also assigning specific affiants to work with each outside foreclosure law firm it uses.

In order to ensure foreclosure counsel's compliance with the amended Rules described above, a representative of Chase will review the complaint, Chase's systems, the note and mortgage (and recorded assignments, if any) to confirm the accuracy of the core facts alleged in

the complaint. The reviewer will record the results of the review in a written statement. This statement of review will contain the name, title, and contact information for the reviewer.

The written statement of review will be imaged into LPS Desktop for counsel's review, and a message confirming the transmission of the image will be sent to counsel through LPS Desktop's "intercom" function. Chase has described this "intercom" function of LPS Desktop to be "an electronic messaging system that provides for direct, two-way, personal communication between foreclosure counsel and the reviewer." Foreclosure counsel will then be able to raise any follow-up questions, comments, or concerns with the reviewer through "intercom" or the contact information set forth in the statement of review.

Chase certifies that it has recently enhanced its practices concerning oversight and supervision of foreclosure counsel. First, under the current structure, an Attorney Management team, made up of non-lawyer Chase employees, is responsible for managing the overall relationship with foreclosure counsel. This group is in constant contact with foreclosure counsel, and questions from counsel can be addressed and/or forwarded for appropriate action through this group.

Second, Chase has established an independent team to conduct on-site audit reviews of foreclosure firms. This group does not report through Chase's foreclosure and bankruptcy management.

Third, Chase has created a new attorney management group within Chase's Legal Department, known as the Attorney Oversight Group ("AOG"). The AOG conducts its own on-site visits (separate from the audit team), reviews policies and procedures, and provides support and advice to Chase's businesspeople in charge of foreclosure management. The AOG is a team of lawyers whose sole responsibility is the oversight and supervision of foreclosure, bankruptcy,

and eviction counsel. The team is currently comprised of eight attorneys, plus a supervising attorney and managing attorney. In addition to these ten attorneys, Chase is currently interviewing and plans to add another two-to-four attorneys in the immediate future. Over the past several months, the AOG has developed a proprietary process for the supervision and oversight of local counsel, which includes regular on-site visits which last several days at a time.

PROPOSED DETERMINATION

Based on the submissions discussed herein it is my proposed determination that Chase has shown, on a Prima Facie basis, that it has processes and procedures in place which, if adhered to, will ensure that the information set forth in affidavits or certifications submitted in foreclosure proceedings is provided by an affiant authorized to act on behalf of the plaintiff in the action and that each affidavit or certification submitted is properly executed and is based upon knowledge gained through a personal review of relevant records which were made in the regular course of business as part of Chase's regular practice to make such records. Chase has filed the required Service Portfolio with the court and has certified that all uncontested mortgage foreclosure cases in that portfolio will be prosecuted under the processes outlined in its Prima Facie showing. Therefore it is my recommendation that Chase be permitted to resume prosecution of the uncontested residential mortgage foreclosure proceedings included in its Servicer Portfolio.

Consistent with paragraph 3 of the Court's March 29, 2011 Order Approving the Recommended Stipulation and Appointing Special Master in this case, nothing in this report and recommendation should be construed as altering or interfering with the right of any party to a foreclosure action to contest the foreclosure in any way that party sees fit, nor altering or

interfering with the discretion of any Superior Court Judge of the State of New Jersey to adjudicate all issues raised by the parties in contested foreclosure matters.

Respectfully submitted,

Richard J. Williams
Special Master