

STATE OF NEW YORK UNIFIED COURT SYSTEM

2014 REPORT OF THE
CHIEF ADMINISTRATOR OF THE COURTS

Pursuant to Chapter 507 of The Laws of 2009

A. GAIL PRUDENTI
Chief Administrative Judge



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PREFACE

To the Governor and the Legislature of the State of New York:

I AM PLEASED TO SUBMIT THIS REPORT on the status of foreclosure settlement conferences in the New York State Courts. Section 10-a(2) of Chapter 507 of the Laws of 2009 directs that “the chief administrator of the courts shall submit a report...to the governor [and key legislative officials] on the adequacy and effectiveness of the settlement conferences authorized [under section 10-a(1)]...which shall include, but not be limited to the number of adjournments, defaults, discontinuances, dismissals, conferences held, and the number of defendants appearing with and without counsel.” Accordingly, this Report provides the required data and other additional information regarding residential foreclosure cases and the foreclosure settlement conferences for the period October 7, 2013 to October 13, 2014.



Hon. A. Gail Prudenti
CHIEF ADMINISTRATIVE JUDGE

I. INTRODUCTION

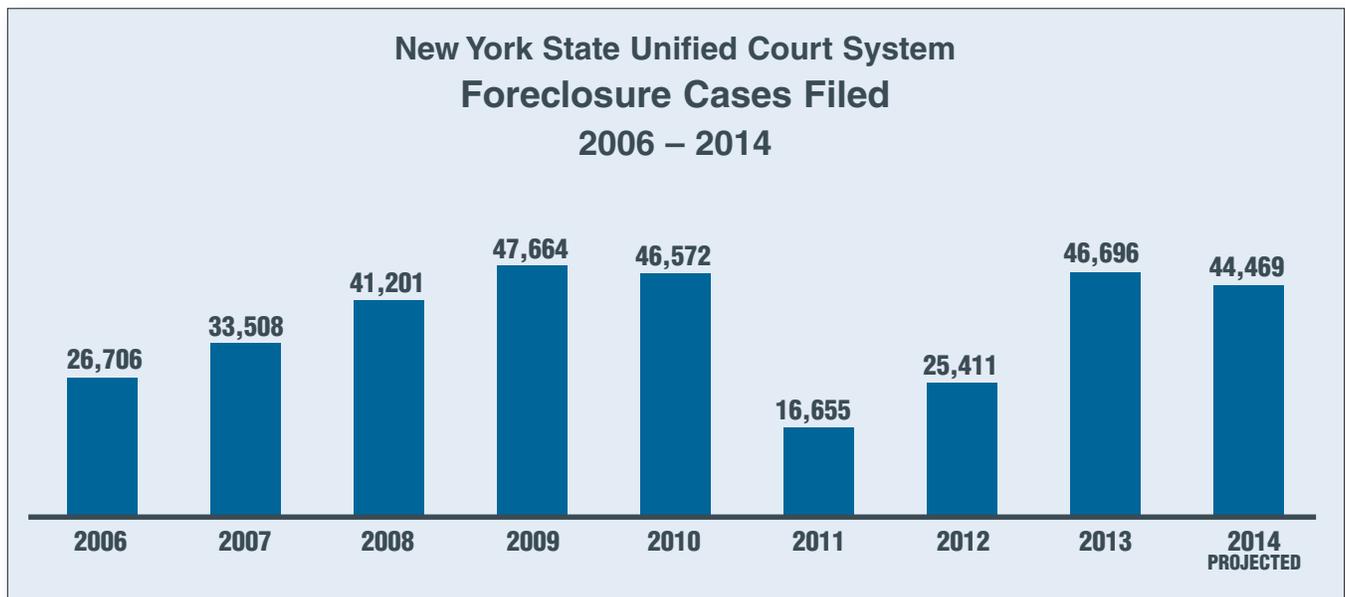
FORECLOSURE CASES CONSTITUTE A MAJOR PORTION of the Unified Court System’s Supreme Court civil caseload — currently nearly 30%. Beyond this significant impact on the court system’s workload, these cases raise critical issues for the litigants and have very real effects on the state’s economy. Under the leadership of Chief Judge Jonathan Lippman, the Judiciary is committed to prioritizing these important cases, and continues to dedicate scarce resources to expediting the foreclosure settlement process while also preserving the rights of all parties throughout the proceedings.

This Report discusses foreclosure caseload statistics as well as the efforts the court system has taken over the past year to improve the adjudication of residential foreclosure cases.*

II. FILING TRENDS

DURING THE REPORTING PERIOD, 45,589 new foreclosure cases were filed. This is a 9% increase compared to the 41,838 cases filed in the reporting period covered in the 2013 Annual Report.

Foreclosure filings reached historic highs in 2009, with 47,664 cases filed. In large part due to new court rules that took effect in 2011 requiring that plaintiffs meet additional requirements when pursuing a foreclosure action (these rules are discussed further herein), filings dropped to 16,655 in 2011 and 25,411 in 2012. As the financial services industry eventually adjusted to the new requirements, filings surged by 84% from 2012 to 2013.



Although foreclosure filings in early 2014 remained high, the courts have experienced a downward trend in new filings in the past six months.

* Caseload statistics are provided for the period from October 7, 2013 (the first day of Term 11, the court term following the last term reported in the 2013 Annual Report) to October 13, 2014 (the last day of the last full term, Term 10, prior to issuance of this Report).

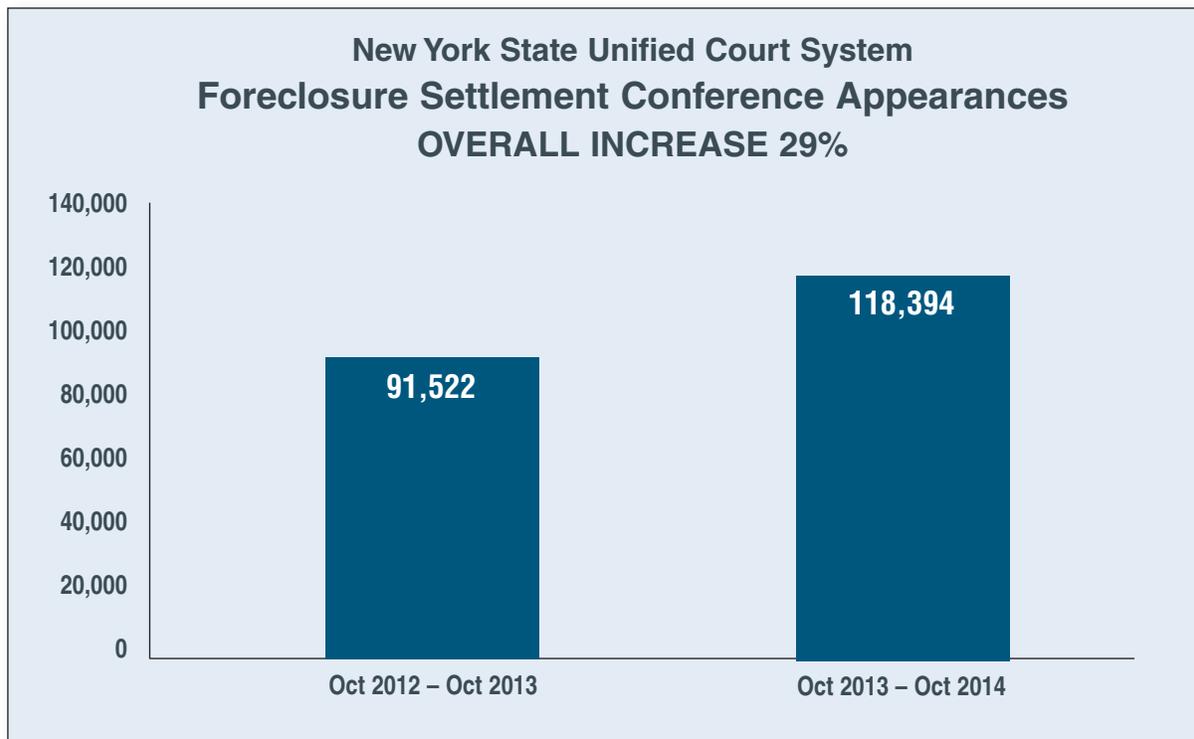
Of the 45,589 new foreclosure cases filed during the reporting period, over 37,000 were residential foreclosure cases requiring a statutorily-mandated settlement conference.

As of October 31, 2014, 83,236 foreclosure cases were pending statewide.

III. FORECLOSURE SETTLEMENT CONFERENCES

DURING THE REPORTING PERIOD, the courts conducted 118,394 foreclosure settlement conferences, a 29% increase from the period covered in the 2013 Annual Report. This is the highest number of conferences since enactment of the legislation requiring settlement conferences, and the continuing influx of cases has had a very significant impact on court operations.

These conferences led to 74,842 adjournments. Defaults were recorded in 13,747 cases, 1,538 actions were discontinued and 330 cases were dismissed. Despite this considerable burden, the Judiciary has maintained its commitment to foreclosure settlement conferences and continues to devote extensive resources to these matters.



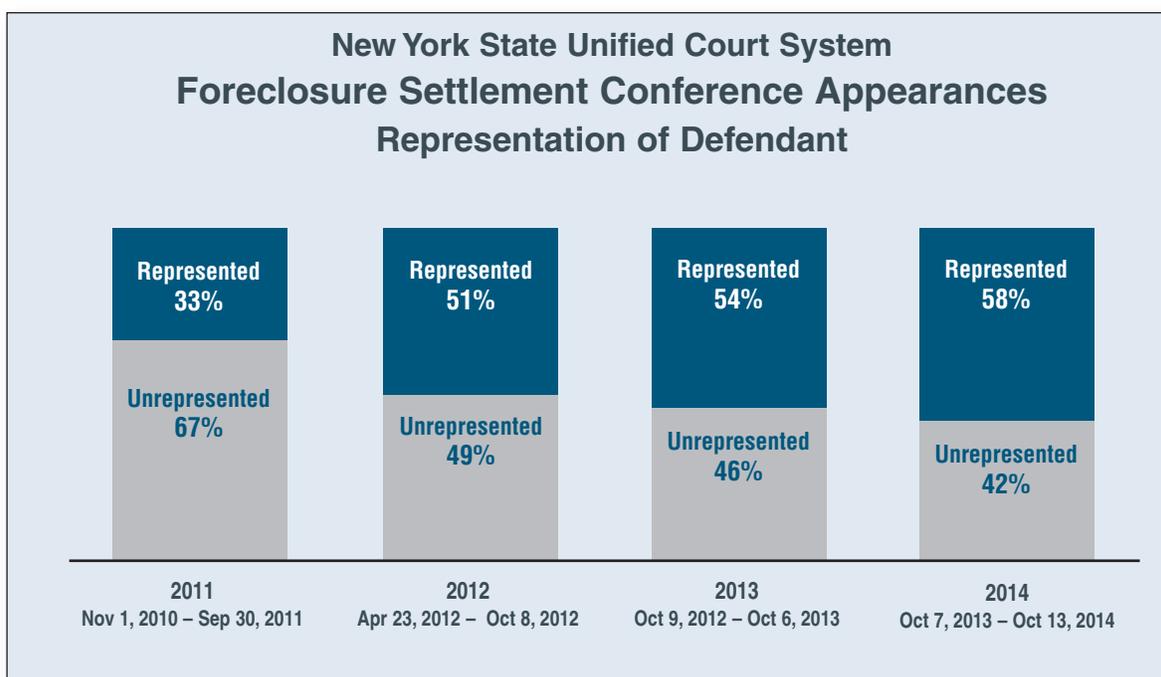
IV. LEGAL REPRESENTATION

FOR THE FOURTH YEAR IN A ROW, Chief Judge Lippman’s efforts to expand civil legal services for low-income New Yorkers have resulted in an increase in the number of residential homeowners represented by counsel in the foreclosure conference process. With the strong support of our partners in state government,

this fiscal year the Judiciary is committing \$70 million from its budget to provide civil legal services to New Yorkers in need. This infusion of funding has led to significant additional legal services for homeowners in foreclosure cases, and has helped to safeguard the rights of homeowners and improve the effectiveness of the settlement conference process.

This past year, over 58% of homeowners have been represented at foreclosure settlement conferences. This is another significant increase from the 54% reported in the 2013 Annual Report and the 51% reported in 2012. It is a dramatic increase from the 33% of homeowners represented by counsel as reported in 2011.

Working in partnership with civil legal services providers, law schools and national, state and local bar associations, the Judiciary continues to promote efforts to provide homeowners with access to civil legal services during the foreclosure process.



V. SHADOW INVENTORY

AS REPORTED IN 2012 AND 2013, the court system was confronted with numerous foreclosure cases that had been commenced with the filing and service of a summons and complaint, yet were never brought before the court because the plaintiff had not filed a request for judicial intervention (RJI). This was primarily due to the affirmation requirement Chief Judge Lippman instituted in October 2010 requiring plaintiffs to certify to the accuracy of the documents they present to the court. This measure was designed to prevent the practice of “robo-signing,” where bank representatives claimed to have personally reviewed thousands of documents in improbably short periods of time. These cases that were never brought before the court

made up what is commonly referred to as the “shadow inventory.” Without an RJJ, the cases could not be assigned to a referee or judge and the homeowner had no opportunity to challenge the foreclosure action.

In response, an order issued by the Chief Administrative Judge authorized the creation of special pilot parts to review these cases. After initial successful pilot projects in Kings and Queens Counties, special court calendars were established for certain residential foreclosure actions.

Beginning in 2012, the courts in New York City identified over 7,500 cases in the shadow inventory. Notices are sent to homeowner defendants, and in-court status conferences are scheduled at which legal service providers and housing counselors were available to assist the homeowners. In cases where the homeowner wishes to proceed, foreclosure settlement conferences are scheduled with the court, the lender and the homeowner.

This process is ongoing. To date over 9,500 settlement conferences have been held in the five New York City counties (these conferences are in addition to the 118,394 settlement conferences noted above).

As discussed in the 2013 annual report, the enactment of CPLR 3012-b, applicable to actions commenced after August 30, 2013, requires that plaintiffs file a certificate of merit when a foreclosure case is commenced. This legislation was enacted to ensure that the plaintiff certifies that a reasonable basis exists to commence the action and that the plaintiff is a creditor entitled to enforcement of the debt. Building on the pre-existing affirmation requirement, the legislation was designed to address the practice of “robo-signing.” Moreover, by requiring filing of the certificate at the commencement of the case, the legislation effectively eliminated the shadow inventory for new cases.

To provide for the transition from the pre-existing affirmation requirement to the new certificate of merit requirement, Chief Administrative Judge Prudenti issued Administrative Order 208/13. This order provided that the prior Administrative Order 431/11(see Attachments for Orders) — requiring an affirmation at or after the filing of a request for judicial intervention — will not apply to residential mortgage foreclosure actions commenced on or after August 30, 2013, and the CPLR 3012-b certificate of merit will apply to all new cases filed on or after that date. For actions commenced prior to the effective date, plaintiffs may either comply with the requirements set forth in AO 431/11 or file a CPLR 3012-b certificate of merit.

These measures have strengthened protections both for financial institutions and homeowners, further ensuring the integrity of the foreclosure process.

VI. SPECIALIZED PARTS

VACANT AND ABANDONED PROPERTY PART

The Vacant and Abandoned Property Part in Suffolk County is a specialized part to expedite cases involving abandoned properties subject to foreclosure proceedings. After careful screening to ensure the property is actually abandoned, and working in partnership with town governments, the Supreme Court places the properties designated as vacant by the municipality on an expedited court calendar that allows lenders to petition for a default judgment and the sale of the property. This program was instituted in response to con-

cerns that vacant and abandoned properties are a blight on communities and decrease neighborhood property values. If a property in this court part is later found to be owner-occupied, the case is referred for a foreclosure settlement conference, where the homeowner has access to counsel.

FORECLOSURE INQUEST PART

Nassau County has created a specialized part that mirrors the goals of the Vacant and Abandoned Property Part in Suffolk County. The Foreclosure Inquest Part permits the plaintiff to petition for expedited rulings in cases where the homeowner has defaulted, failed to appear, or has exhausted all settlement options. In order to participate in this program the plaintiff must waive deficiency judgments, which is a benefit to homeowners.

SERVICER PARTS

Servicer parts were implemented in the Bronx, Nassau and Suffolk Counties to assist homeowners and expedite the foreclosure settlement conference process by requiring authorized representatives from the lender or loan servicing institution to be present during the settlement conferences. The representatives must be well-versed with the facts of each case and have the authority to approve or deny a loan modification. The servicer parts have reduced delays in the conference process by streamlining decision-making on these modification decisions. Servicer parts will be expanded to other counties in the coming months.

VII. STATEWIDE FORECLOSURE COMMITTEE

THE STATEWIDE FORECLOSURE COMMITTEE, created by Chief Administrative Judge Prudenti in December 2011, continues to meet on a regular basis. Chaired by First Deputy Chief Administrative Judge Lawrence K. Marks, the committee, comprised of judges, court administrators, court referees and other court staff from judicial districts across the state, monitors the court system's foreclosure inventory. Committee members share best practices and case management strategies, and work to improve the Judiciary's processing of foreclosure cases. Model programs to enhance case processing and streamline access to the courts have been created and implemented, with the results shared statewide. There is a steady exchange of information which informs foreclosure adjudication in all judicial districts.

VIII. COLLABORATION

AS PART OF ITS COMMITMENT to improve, the Judiciary participates in an ongoing dialogue with stakeholder partners on the fairness, effectiveness and efficiency of case processing of foreclosure cases.

Representatives of the court system's Office of Policy and Planning meet regularly with a group of mortgage lender and loan servicer representatives, regulators, homeowner advocates, judges and court personnel to review legal, operational and policy issues in foreclosure cases. This collaboration resulted in a recent-

ly approved amendment to Rule 202.12-a of the Uniform Rules for the Trial Courts, expanding the scope of a referee's authority to consider alternative loss mitigation options, a benefit to both homeowners and financial institutions. Another recent project is the development of model settlement conference forms to improve record-keeping and streamline the conference process.

In addition, the Backup Judge program, commenced in Kings, Nassau, Queens and Suffolk counties in June 2014, was implemented after consultation with lender representatives and homeowner advocates. Matters pending in the settlement conference parts may be referred to a designated backup judge for an expedited consideration of issues that are beyond the legal authority of the referee to resolve. Resolution of these outstanding issues informs and expedites the loan modification process and can reduce the number of appearances in the settlement conference parts.

IX. CONCLUSION

FORECLOSURE ACTIONS comprise a major portion of the Unified Court System's civil docket, representing nearly 30% of all pending Supreme Court civil cases statewide. Recognizing the importance of these cases to homeowners, financial institutions and indeed the economy of our state, the Judiciary has dedicated scarce judicial resources to prioritizing foreclosure matters.

Providing civil legal services to low-income New Yorkers remains at the forefront of the Judiciary's agenda. That nearly 60% of homeowners are now represented in the foreclosure settlement conferences is a testament to the unwavering commitment of Chief Judge Lippman to provide counsel to those at risk of losing their homes.

Despite limited resources, and with filings still at near-historic levels, the courts held 118,394 settlement conferences during the reporting period. An additional 9,500 conferences were held for homeowners with cases in the shadow inventory. If new foreclosure filings continue the downward trend that the courts have experienced in recent months, resources will be redirected to the post-foreclosure settlement conference inventory of pending cases.

Significant progress has been made to address the ongoing volume of foreclosure cases, and the Judiciary is committed to working to find new and creative solutions to expedite case processing. The courts will continue working with our partners in government, and with bar associations, law schools, financial institutions and civil legal service providers, to develop new strategies to improve the processing of foreclosure cases. Our commitment to the just resolution of these cases remains steadfast.

NEW YORK STATE UNIFIED COURT SYSTEM

SUMMARY TABLE

October 7, 2013 – October 13, 2014

Conferences Held	118,394
Number of Adjournments	74,842
Defaults	13,747
Discontinuances	1,538
Dismissals	330
Defendants Appearing with Counsel	60,753
Defendants Appearing without Counsel	43,659

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and notwithstanding any provision in AO/431/11 to the contrary, I hereby order that, effective immediately,

- the provisions of AO/431/11 shall not apply to residential mortgage foreclosure actions commenced on or after August 30, 2013; and
- in residential mortgage foreclosure actions commenced prior to August 30, 2013, where no affirmation has been filed pursuant to AO/431/11, plaintiff's counsel may either (1) comply with AO/431/11, or (2) file with the court at the time of the filing of the Request for Judicial Intervention a certificate of merit whose contents are described in section 3012-b(a) of the Civil Practice Law and Rules.



Chief Administrative Judge of the Courts

Dated: August 1, 2013

AO/208/13

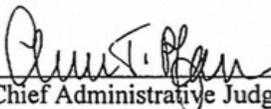
**ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

Pursuant to the authority vested in me, at the direction of the Chief Judge of the State of New York and with the consent of the Presiding Justices of the Appellate Divisions, I hereby order and direct that, effective November 18, 2010, nunc pro tunc, plaintiffs counsel in residential mortgage foreclosure actions shall file with the court in each such action an affirmation, in the revised Form A attached hereto, at the following times:

- In cases commenced after the effective date of this Order, at the time of the filing of the Request for Judicial Intervention.
- In cases pending on such effective date, where no judgment of foreclosure has been entered, at the time of filing either the proposed order of reference or the proposed judgment of foreclosure.
- In cases where judgment of foreclosure has been entered but the property has not yet been sold as of such effective date, five business days before the scheduled auction, with a copy to be served on the referee.

This revised form affirmation shall replace the affirmation previously required pursuant to AO/548/10. However, a filing by counsel of that earlier form affirmation shall satisfy the requirement of this order.

In conjunction with the filing of Form A, a representative of plaintiff may file a supporting affidavit as set forth in Form B attached hereto, in addition to such other information as the court may require.



Chief Administrative Judge of the Courts

Dated: March 2, 2011

AO/431/11



