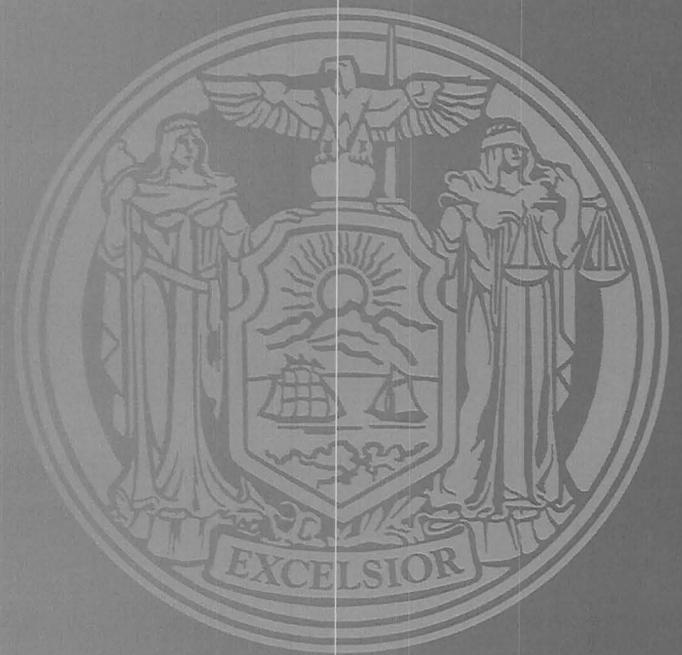


STATE OF NEW YORK UNIFIED COURT SYSTEM

2011 REPORT OF THE  
CHIEF ADMINISTRATOR OF THE COURTS

*Pursuant to Chapter 507 of The Laws of 2009*

ANN PFAU  
*Chief Administrative Judge*



In accordance with section 10a-2 of Chapter 507 of the Laws of 2009, this report provides statistics and other information regarding residential foreclosure cases and settlement conferences for the period November 2010 to September 2011.

## I. Introduction

From the end of 2010 and throughout 2011, we experienced a sharp downturn in the number of residential foreclosure cases entering our courts. Because this dramatic decline in newly filed cases does not allow for a meaningful year to year comparison, this report provides detail on a few items that we believe are of particular significance: the pace of settlement conferences, the settlement rate and the court system's efforts to enhance the availability of legal representation for unrepresented homeowners.

## II. Affirmation Requirement

In the late summer and early fall of 2010, major media outlets throughout the nation reported findings of widespread deficiencies in the procedures that banks use to commence residential mortgage foreclosure cases. Specifically, there were reports of "robo signing," where bank representatives claimed to have personally reviewed thousands of documents in impossibly short periods of time. This resulted in factual inaccuracies in key documents as well as fraudulent and inadequate notarizations. In response to this situation, and to prevent procedurally flawed cases from proceeding to foreclosure, Chief Judge Jonathan Lippman instituted a new filing requirement in all residential foreclosure cases. As of October 20, 2010, attorneys for banks and lenders were required to submit affirmations certifying that they have taken reasonable steps to verify the accuracy of court documents in support of a residential foreclosure case. These attorneys must also contact bank representatives to confirm that crucial documents were thoroughly reviewed and that they were not "robo signed." (See Appendix #2).

Following the effective date of the affirmation requirement, there was a sharp decline in the number of residential foreclosure cases filed in courts statewide. Before October 2010, the average number of new filings statewide was 3,500 per month. After the affirmation requirement was put into place, that number dipped to 775 per month. The drop off in cases entering the courts has been especially evident in counties where filings were typically high. For example, in Westchester County, prior to the affirmation, filings averaged approximately 200 per month. Since the affirmation requirement, they have averaged only 30 per month.

### III. Settlement Conferences

Despite the dramatic decline in the number of newly filed cases, our foreclosure workload remains substantial. Settlement conferences are being conducted for cases that were filed previously, some as early as 2008. Moreover, these cases still require, on average, four to eight distinct appearances before the settlement conference process is completed. This year alone, we are on pace to conduct approximately 80,000 conferences. Given the large pending caseload and the length of time that cases remain in the conference parts, we continue to ask judges and staff who handle other case types to assist with foreclosure cases in addition to their other duties.

### IV. Settlement Rate

In assessing the efficacy of settlement conferences, we remain focused on those cases that have completed the conference process. For this group of cases, the settlement rate is steadily rising. Indeed, overall the settlement rate for 2011 has risen 29 percent from last year.

### V. Legal Representation

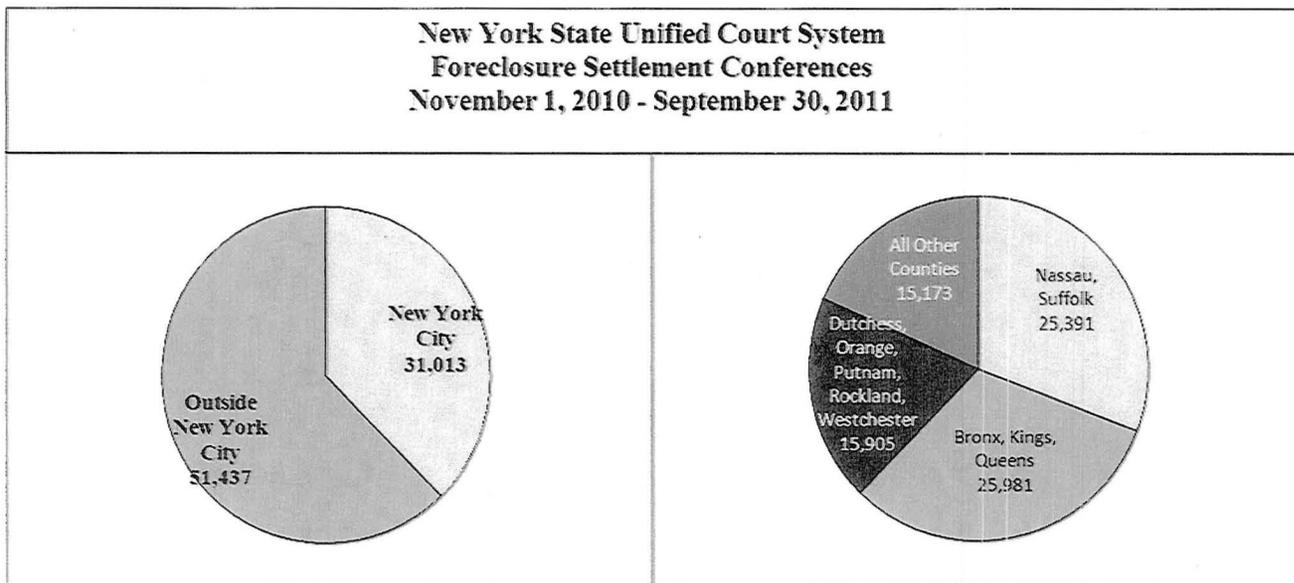
As in the past, one of our major concerns is access to legal representation for homeowners who cannot retain private counsel. Given the budgetary constraints and diminished

funding that civil legal services providers currently face, we are especially concerned about an increase in the number of unrepresented defendants participating in conferences and the possibility that this will result in fewer settlements. To address this problem, and as part of Chief Judge Lippman’s overall commitment to enhancing the availability of civil legal services, the court system has distributed funding to civil legal service providers, many of which have foreclosure units. In addition, we have begun pilot programs in Orange and Queens Counties where a lawyer is present in the courthouse to assist unrepresented defendants.

VI. Foreclosure Settlement Conference Statistics

1. Conferences Held

From November 2010, when the last report was submitted, to September 2011, a total of 82,450 foreclosure settlement conferences were held statewide. Thus, despite the decrease in newly filed cases, the number of settlement conferences continues to remain steady.



## 2. Defaults

Following the 2009 and 2010 legislation and the court system's extensive public outreach efforts, the default rate dropped significantly. From November 2010 to September 2011, only ten percent of homeowner-defendants did not appear for any of their scheduled conferences, down from an estimated 90 percent prior to the legislation. The court system remains dedicated to helping ensure full defendant-homeowner participation in conferences and courts continue to participate in local public outreach sessions and to render procedural assistance to litigants at court help centers.

## 3. Adjournments

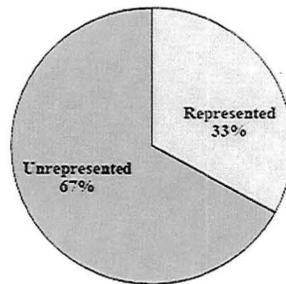
During November 2010 to September 2011, there were 55,043 adjournments of settlement conferences statewide. As it has been since our implementation of the residential foreclosure legislation, each case receives careful and comprehensive attention during the conferencing process, requiring an average of four to eight appearances before a judge or court attorney referee.

## 4. Representation

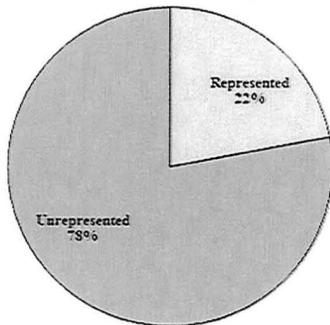
The availability of representation for defendants who cannot retain counsel is a paramount concern, because it impacts directly upon the success of the conference process and the ability to reach settlement. Initially, over the course of the first years of the settlement conference program, there was an increase in legal representation. Currently, however, with the onset of budget restraints and cuts, we are concerned that gains we have made are being lost. In new cases filed between November 2010 to September 2011, 67 percent of homeowners attended settlement conferences without the benefit of legal counsel.

**New York State Unified Court System  
Attorney Representation  
November 1, 2010 - September 30, 2011**

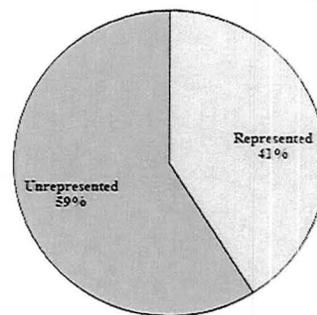
**Statewide**



**New York City**



**Outside New York City**



In an effort to increase the availability of representation for foreclosure defendants, the court system completed a procurement process which culminated in awarding money to various legal service provider groups. Many of the organizations that received awards have foreclosure prevention units that will render assistance or legal representation to homeowners at settlement conferences. With the recent distribution of funds to these providers, we hope to help stem any potential negative consequences of the diminished budgets of foreclosure assistance providers.

In addition, pilot programs that provide a lawyer on site in the courthouse to assist unrepresented foreclosure defendants with settlement conferences are underway in Queens and Orange counties.

## 5. Settlements

The settlement rate has increased by 29 percent. From November 2010 through September 2011, there were 4,253 settlements statewide. As we noted last year, this number represents the ongoing nature of the settlement conference process and the large volume of cases still being negotiated. Given the sizeable number of cases currently in settlement mode, an evaluation of cases that have fully completed conferencing remains the best indicator of the efficacy of the mandated settlement conferences.

## VII. Conclusion

Despite the recent low number of newly filed cases, our residential foreclosures workload continues to weigh heavily on the entire court system. Indeed, for the upcoming year, we expect settlement conferences to remain at the current pace while the tens of thousands of pending cases make their way through the conference process. Moreover, we anticipate a dramatic surge of new cases entering the courts statewide as compliance with the affirmation requirement increases.

In sum, the Judiciary's role in responding to the foreclosure crisis continues to be a herculean undertaking on the part of all the courts, especially following substantial budgetary cuts and significant layoffs. In addition to meeting the challenges posed by this immense and complex workload, the court system has worked hard to provide access to legal services and enhance the overall conference process. Our hope is that settlement conferences will become more efficient and ultimately, that a greater number of these cases will end in mutually agreeable outcomes that prevent home loss and minimize harm to the parties.

## APPENDIX 1

### NEW YORK STATE UNIFIED COURT SYSTEM SUMMARY TABLE NOVEMBER 1, 2010 - SEPTEMBER 30, 2011

<b>Conferences Held</b>	<b>82,450</b>
<b>Number of Adjournments</b>	<b>55,043</b>
<b>Defaults</b>	<b>2,678</b>
<b>Discontinuances</b>	<b>1,684</b>
<b>Dismissals</b>	<b>39</b>
<b>Defendants with Representation*</b>	<b>1,650</b>
<b>Defendants without Representation*</b>	<b>3,330</b>

\*This figure is based upon the 7,924 new cases filed between November 1, 2010 and September 30, 2011, minus those cases where the defendant defaulted or where no conferences were conducted.



*Press Releases* [back](#)

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Date: October 20, 2010

**Hon. Ann Pfau**  
 Chief Administrative Judge

[www.nycourts.gov/press](http://www.nycourts.gov/press)

**New York Courts First in Country to Institute Filing Requirement to Preserve Integrity of Foreclosure Process**

NEW YORK – The New York State court system has instituted a new filing requirement in residential foreclosure cases to protect the integrity of the foreclosure process and prevent wrongful foreclosures. Chief Judge Jonathan Lippman today announced that plaintiff’s counsel in foreclosure actions will be required to file an affirmation certifying that counsel has taken reasonable steps – including inquiry to banks and lenders and careful review of the papers filed in the case – to verify the accuracy of documents filed in support of residential foreclosures. The new filing requirement was introduced by the Chief Judge in response to recent disclosures by major mortgage lenders of significant insufficiencies – including widespread deficiencies in notarization and "robosigning" of supporting documents – in residential foreclosure filings in courts nationwide. The new requirement is effective immediately and was created with the approval of the Presiding Justices of all four Judicial Departments.

Chief Judge Lippman said, "We cannot allow the courts in New York State to stand by idly and be party to what we now know is a deeply flawed process, especially when that process involves basic human needs – such as a family home – during this period of economic crisis. This new filing requirement will play a vital role in ensuring that the documents judges rely on will be thoroughly examined, accurate, and error-free before any judge is asked to take the drastic step of foreclosure."

Under the new requirement, plaintiff’s counsel in foreclosure matters must submit the affirmation at one of several stages. In new cases, the affirmation must accompany the Request for Judicial Intervention. In pending cases, the affirmation must be submitted with either the proposed

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order of reference or the proposed judgment of foreclosure. In cases where a foreclosure judgment has been entered but the property has not yet been sold at auction, the affirmation must be submitted to the court referee, and a copy filed with the court, five business days before the scheduled auction. Counsel is also obligated to file an amended version of the affidavit if new facts emerge after the initial filing.

View the [affirmation form](#).

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Web page updated: October 20, 2010 - [www.NYCOURTS.gov](http://www.NYCOURTS.gov)



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.

  
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Chief Administrative Judge of the Courts

Dated: March 2, 2011

AO/431/11