



Florida Press Association
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November 16, 2011

The Honorable Manuel Menendez, Jr.
Chief Judge of the 13th Judicial Circuit of Florida
800 E. Twiggs Street, Room 602
Tampa, Florida 33602

Dear Chief Judge Menendez:

We write to convey our serious concern that foreclosure hearings in Hillsborough County are being conducted in a manner that inappropriately impedes public access to judicial proceedings. It has recently come to our attention that members of the public encounter significant obstacles when attempting to observe foreclosure proceedings, and in some instances are unable to do so at all. We believe this practice violates Florida law's robust guarantee of open courts.

It is our understanding that it is routine for foreclosure proceedings in Hillsborough County to take place in "hearing rooms" rather than court rooms. We understand that these "hearing rooms" are situated behind a locked door, which is guarded by a bailiff, and that individuals must receive specific permission from the bailiff to attend proceedings in any particular foreclosure case. One defendant in a foreclosure case informed us that, on two occasions, he was accompanied to court by his wife (a co-defendant in his case) as well as three to four individuals interested in observing his hearing. In both instances, the bailiff refused to allow him entrance to the "hearing room" with more than one other person accompanying him. The second time this occurred, this individual presented to the bailiff a copy of Chief Justice Canady's November 2010 supervisory memorandum directing all chief judges to ensure open access to foreclosure proceedings, but access to his hearing remained restricted. On both occasions, this individual brought his concern, as well as Chief Justice Canady's supervisory memorandum, to the attention of the presiding judge. In addition, we have spoken with a local citizen who has made several attempts in recent weeks to observe foreclosure proceedings, but has been told every time that foreclosure cases are being heard in "hearing rooms," rather than open court rooms, and that she could not observe those proceedings.

As you are aware, Chief Justice Canady's supervisory memorandum directed all chief judges "to examine the current practices within their respective circuits to ensure that those practices are entirely consistent with the constitutional, statutory, procedural rule, and case law requirements of this state regarding the presumption that state court proceedings are open to the public." That directive was issued after the undersigned brought to the Chief Justice's attention several

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examples of improper barriers to public access to foreclosure proceedings around the state. In his response to us, the Chief Justice forcefully articulated the imperative of guaranteeing open access to the state's judicial proceedings: "The courts of Florida belong to the people of Florida. The people of Florida are entitled to know what takes place in the courts of this state. No crisis justifies the administrative suspension of the strong legal presumption that state court proceedings are open to the public." A copy of the Chief Justice's supervisory memorandum, and his accompanying letter to us, are enclosed herewith.

Chief Justice Canady's directive embodied clearly established legal principles guaranteeing open access to court proceedings. The Supreme Court of Florida has held that "both civil and criminal court proceedings in Florida are public events and adhere to the well-established common law right of access to court proceedings and records." *Barron v. Fla. Freedom Newspapers, Inc.*, 531 So. 2d 113, 116 (Fla. 1988); *see also* Fla. R. Jud. Admin. 2.420 (codifying public right of access to records of the judiciary). The protection of public access serves fundamental constitutional values. In particular, the "value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known." *Sarasota Herald-Tribune v. State*, 924 So. 2d 8, 12 (Fla. 2d DCA 2005) (quoting *Press-Enter. Co. v. Super. Ct.*, 464 U.S. 501, 508 (1984)).

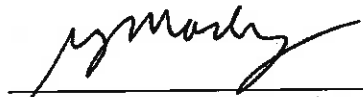
Limiting public access to court proceedings in the context of foreclosure cases raises especially urgent concerns. As you are aware, the judicial process surrounding foreclosure cases has drawn intense public scrutiny in recent years. This reflects the unusually deep impact of the foreclosure crisis on communities around the state; it also reflects widespread concern over procedural irregularities in foreclosure cases. Against that background, it is absolutely critical that foreclosure proceedings occur in the open. As the Supreme Court of Florida has noted, judicial transparency plays an indispensable role in maintaining "the judicial system's credibility in a free society." *Barron*, 531 So. 2d at 116. That credibility cannot be maintained when access to court proceedings is contingent on the permission of individual judges or bailiffs.

We have no objection, of course, to ordinary courthouse security measures. But conducting foreclosure proceedings in a manner that makes them categorically inaccessible to members of the general public cannot be justified on those grounds. We urge you to confer with your court's personnel and take action to ensure that foreclosure proceedings in Hillsborough County are conducted consistently with Florida's strong guarantee of judicial transparency.

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We would be happy to meet with you to discuss this further.

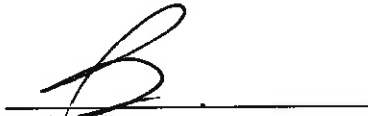
Respectfully,



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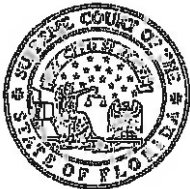


Gil Thelen
Executive Director
Florida Society of News Editors



Randall C. Marshall
Legal Director
The American Civil Liberties Union of Florida

cc: Florida Supreme Court Chief Justice Charles T. Canady



Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

CHARLES T. CANADY
CHIEF JUSTICE
BARBARA J. PARIENTE
R. FRED LEWIS
PEGGY A. QUINCE
RICKY POLSTON
JORGE LABARGA
JAMES E. C. PERRY
JUSTICES

THOMAS D. HALL
CLERK OF COURT

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November 17, 2010

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Mr. Talbot D'Alemberte
Mr. Larry Schwartztol
Mr. Randall Marshall
Mr. James Parker Rhea
Mr. C. Patrick Roberts
Mr. Gil Thelen
Mr. James Denton

Gentlemen:

Thank you for your letter of November 12, 2010, regarding public access to Florida foreclosure proceedings. As you know, judicial ethics rules prohibit me from intervening in actual legal disputes pending or likely to be filed in lower courts, including the possible future litigation you mentioned with regard to an incident in Duval County.

But Canon 3C(3) of the Florida Code of Judicial Conduct expressly says that "[a] judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure . . . the proper performance of their other judicial responsibilities." Under the Florida Constitution, article V, section 2(b), I

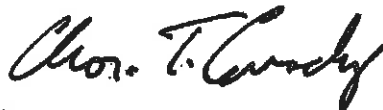
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am the chief administrative officer of the state courts system. I write you solely in that capacity.

The courts of Florida belong to the people of Florida. The people of Florida are entitled to know what takes place in the courts of this state. No crisis justifies the administrative suspension of the strong legal presumption that state court proceedings are open to the public.

Today I have sent to the chief judges of Florida's twenty judicial circuits a supervisory memorandum—a copy of which is enclosed—setting forth my administrative directive on this matter. Under that directive, the chief judges shall ensure that the judges they supervise and the staff who report to those judges, as well as bailiffs and employees of the clerks of court, are not violating the rights of Floridians by improperly closing judicial proceedings to the public. The chief judges shall promptly exercise their administrative and supervisory authority to countermand closures or impediments to access that are inconsistent with Florida law.

Sincerely,



Charles T. Canady

CTC/ps

Enclosure



Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

CHARLES T. CANADY
CHIEF JUSTICE
BARBARA J. PARIENTE
R. FRED LEWIS
PEGGY A. QUINCE
RICKY L. POLSTON
JORGE LABARGA
JAMES E.C. PERRY
JUSTICES

THOMAS D. HALL
CLERK OF COURT

KEVIN WHITE
ACTING MARSHAL

MEMORANDUM

TO: Chief Judges of the Circuit Courts

FROM: Chief Justice Charles T. Canady *CTC*

DATE: November 17, 2010

SUBJECT: Mortgage Foreclosure Proceedings

Enclosed for your review and action is a letter dated November 12, 2010, that I received from the Florida Press Association and other organizations. The letter alleges that in some instances, members of the public and/or press either have been advised that they cannot attend mortgage foreclosure proceedings or have been prevented from attending such proceedings.

As the chief administrative officer of the Florida judicial branch, I am directing all chief judges to examine the current practices within their respective circuits to ensure that those practices are entirely consistent with the constitutional, statutory, procedural rule, and case law requirements of this state regarding the presumption that state court proceedings are open to the public.

I also ask that you communicate with all judges and court staff in your circuit to remind them of the relevant provisions relating to open court proceedings. It is important for you to communicate with the clerks of court and bailiffs within your circuit as well to ensure that those offices provide any visitors

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or callers with the correct information about attendance at mortgage foreclosure or other court proceedings.

I would also like to take this opportunity to clarify the Supreme Court's understanding of the goals of the Foreclosure and Economic Recovery Funding Initiative, which was partially funded by the Legislature during the 2010 Legislative Session. I have reviewed Judge John Laurent's memorandum of October 28, 2010, a copy of which is attached and incorporated herein by reference. I agree with his description of the 62-percent goal established by the Trial Court Budget Commission as a means to help measure the court system's progress in the initiative and to document how the appropriation for the foreclosure initiative is being spent. There is no reason why the 62-percent goal should interfere with a judge's ability to adjudicate each case fairly on its merits. Each case must be adjudicated in accordance with the law.

Thank you for your ongoing efforts to appropriately administer and resolve the avalanche of mortgage foreclosure cases that have been overwhelming the court system during the past few years. I recognize that the challenge you face in assuring that these cases are resolved properly is unprecedented. I am confident that with the cooperation of all judges and court staff—along with the tools of the revised rules of court procedure, implementation of the managed mediation program, and the influx of court resources through the Foreclosure and Economic Recovery Funding Initiative—the Florida courts will be able to meet this challenge in a manner that protects and preserves the rights of all parties as well as interested observers.

CTC/LG/dgh

Enclosures

cc: Trial Court Administrators