STATE OF NEW YORK UNIFIED COURT SYSTEM

2013 REPORT OF THE CHIEF ADMINISTRATOR OF THE COURTS

Pursuant to Chapter 507 of The Laws of 2009

A. GAIL PRUDENTI
Chief Administrative Judge

2013 Report of the Chief Administrator of the Courts

Pursuant to Chapter 507 of The Laws of 2009

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 statistics and other additional information regarding residential foreclosure cases and foreclosure settlement conferences for the period October 9, 2012 to October 6, 2013.

Hon. A. Gail Prudenti
CHIEF ADMINISTRATIVE JUDGE

TABLE OF CONTENTS

I. INTRODUCTION

FORECLOSURE CASES COMPRISE almost a third of the Unified Court System's supreme court civil caseload. Recognizing the ongoing impact these cases have not only on the court but also on the economy, the judiciary has remained committed to prioritizing the foreclosure docket. The efforts that began in April 2012 to refine and enhance the case information gathered in these matters have continued and provide the basis for this report which will focus on the foreclosure data recorded from October 9, 2012 to October 6, 2013.

II. STATEWIDE FORECLOSURE COMMITTEE

THE STATEWIDE FORECLOSURE COMMITTEE that was created by Chief Administrative Judge A. Gail Prudenti in December 2011 continues to meet on a regular basis. Chaired by the Honorable Judy Harris Kluger, Chief of Policy and Planning for New York State Courts, the committee shares case management strategies, best practices and lessons learned from local programs. It is comprised of state and local administrators, judges, and legal and clerical staff from every judicial district. The information gathered and shared by this committee is an invaluable resource for both administrators and courts throughout the state.

Recently, the committee began to discuss and explore a pilot concept that would allow for an expedited procedure in cases involving abandoned properties subject to foreclosure. Through this process, once the property is deemed abandoned by the court, plaintiffs would be authorized to move for judgment and sale after a foreclosure complaint is filed and the time for all defendants to answer has expired. Much like other matters that the committee has addressed, there have been discussions with the counties that are considering the program regarding operational and substantive issues as well as the need to address the concerns of all interested parties.

III. REFORMS OF DATA COLLECTION

EIGHTEEN MONTHS AFTER A MAJOR STATEWIDE INITIATIVE to create uniformity and streamline data entry in foreclosure matters, the courts have embraced the new data collection system. All 62 counties in New York State are now using the same data metrics. Not only has the new system standardized the process, which will allow for reliable year-to-year comparisons in the near future, but it has also proven to be enormously helpful to the individual counties as a case management resource.

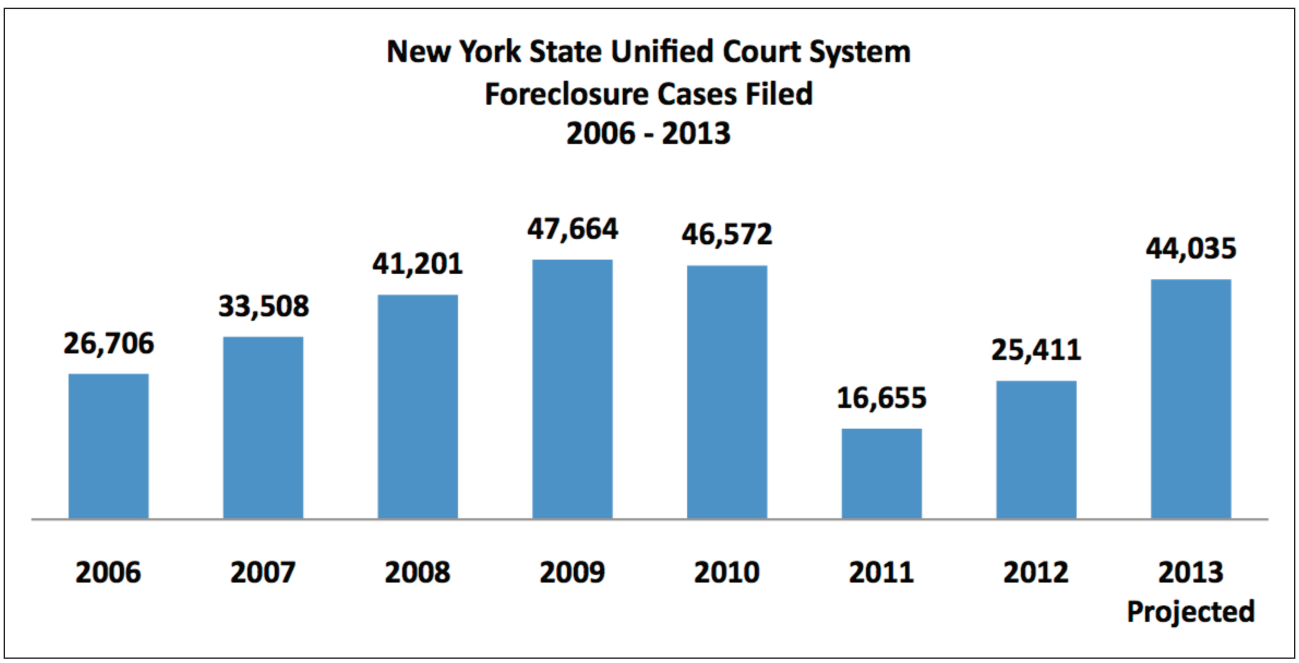
In addition to the statewide reports, the Unified Court System's Office of Court Research, in collaboration with the Office of Policy and Planning, has developed individual county reports that provide detailed information concerning new foreclosure filings, pending caseloads and other Foreclosure Settlement Conference (FSC) activity. Initial feedback from the Statewide Foreclosure Committee and local county administrators has been extremely positive

IV. FORECLOSURE FILING TRENDS

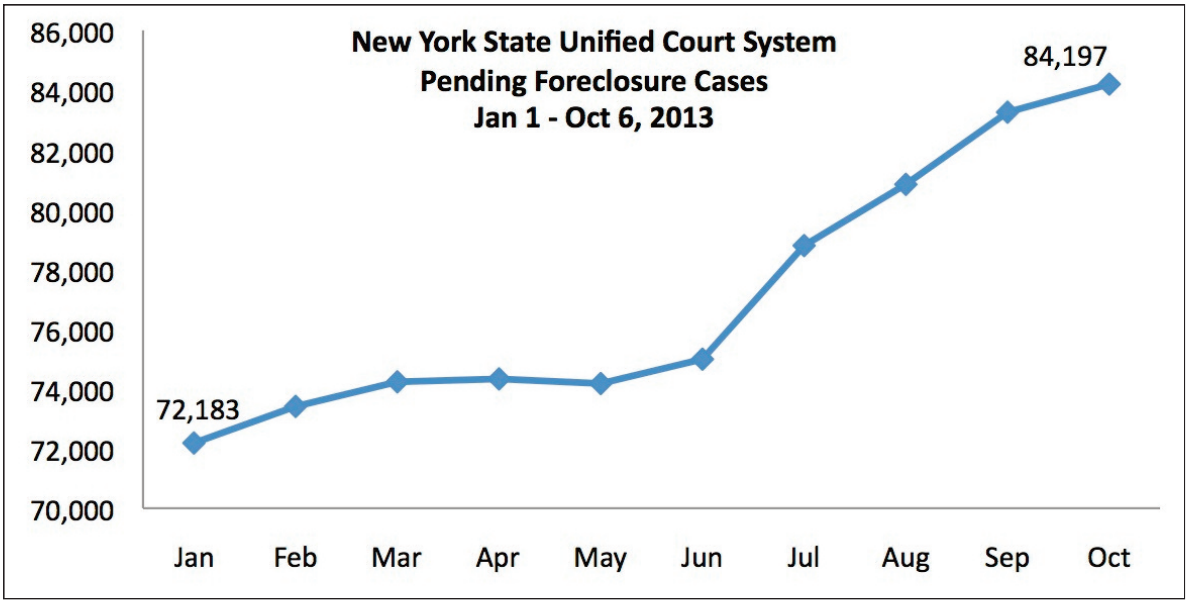
AS DISCUSSED AT LENGTH IN BOTH THE 2011 AND 2012 ANNUAL REPORTS, the October 2010 Administrative Order requiring the filing of an affirmation by the plaintiff certifying the accuracy of court documents had an immediate and significant impact on foreclosure case filings. In the two consecutive years following this requirement, filings decreased substantially. Chief Judge Jonathan Lippman instituted this filing requirement in all residential foreclosure cases to combat the practice of "robo-signing" wherein bank representatives claimed to have personally reviewed thousands of documents in impossibly short periods of time.

The substantial decline in filings in 2011 and 2012 seems to indicate that the banking industry had difficulty complying with the affirmation requirement. Recent filing trends suggest that they are now better able to meet that requirement.

In Terms 1 through 10 of this year, 33,873 new foreclosure cases were filed, 29,282 of which were residential foreclosure cases requiring a settlement conference. Based upon these year-to-date statistics, the projected number of filings for 2013 is approximately 44,035 new cases. This is markedly higher than the total filings in 2011 and 2012. In fact, the projected new filings in 2013 are more than the combined total of the filings for the prior two years.



With this increase in filings, and despite numerous and varied court initiatives and innovations to process these cases, the pending foreclosure inventory has climbed more than 16 percent since the beginning of the year. On the last day of the reporting period covered by this report, over 84,000 foreclosure cases were pending.



V. SETTLEMENT CONFERENCES

THE SUBSTANTIAL INCREASE IN FILINGS HAS HAD A TREMENDOUS IMPACT on court operations. Between October 9, 2012 and October 6, 2013, the current reporting period for this report, the court conducted 91,522 foreclosure settlement conferences. Over 76,000 of these mandated conferences were conducted in the first nine months of this year alone. It is projected that close to 100,000 conferences will be held in 2013. The conference process has stretched resources to their limits in the courts, as well as for the housing counseling agencies and legal service providers that handle these matters on a daily basis.

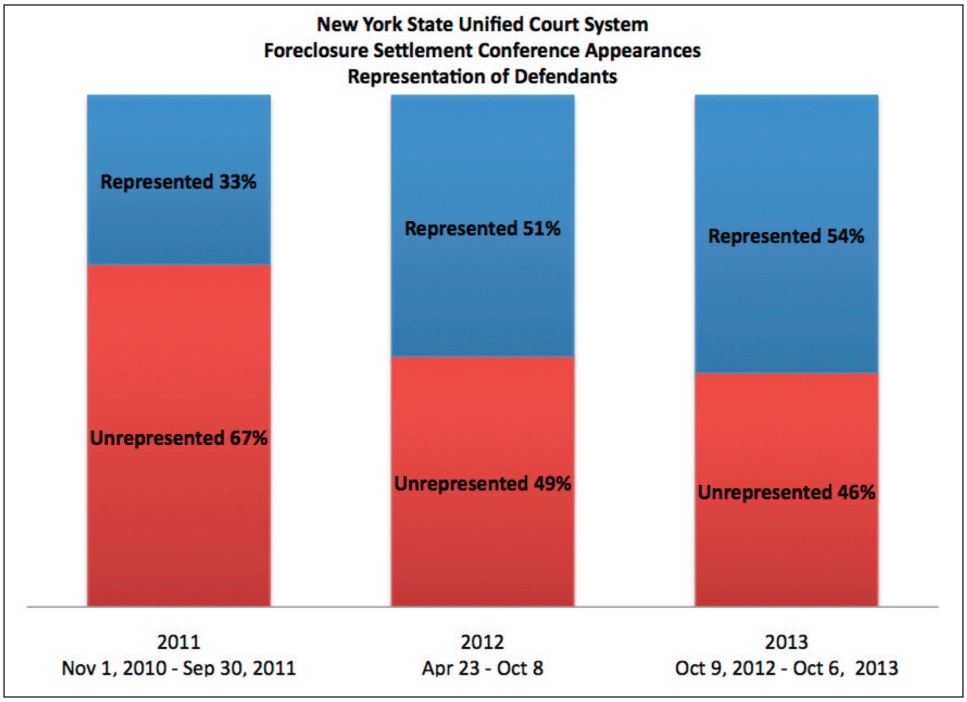
VI. REPRESENTATION

IN THE RECENT SERIES OF PUBLIC HEARINGS highlighting the unmet civil legal service needs around the state, Chief Judge Lippman continued to advocate for a comprehensive approach to providing legal services to low-income New Yorkers in key civil matters involving essentials of life, including foreclosure proceedings. Representation for residential homeowners facing foreclosure remains at the forefront of the Chief Judge's mission.

The Judiciary continues its efforts to increase the availability of counsel to homeowners unable to afford representation. Legal service providers, volunteer lawyers, law school clinics and housing counselors are working with the courts in each judicial district to provide representation at these conferences.

According to the 2011 Annual Report, only 33 percent of defendants in residential foreclosure cases were represented at their settlement conferences. In the 2012 Report, representation of homeowners increased to 51 percent.

Based on the collaborative efforts of many, and the $40 million sought and secured for civil legal services, including foreclosure matters, over 54 percent of defendants had representation at foreclosure settlement conferences. This is a marked increase from when the foreclosure crisis began. Moreover, this increase in representation occurred at a time when the number of conferences held soared.



VII. SHADOW INVENTORY PILOT

AS REPORTED IN 2012, the court system was faced with a serious issue wherein thousands of residential foreclosure cases were commenced with the filing and service of a summons and complaint, yet were not before the court because a request for judicial intervention had not been filed. These cases made up what is now commonly referred to as the "shadow inventory." Initial estimates had the number of shadow cases in the thousands.

In June 2012 Chief Administrative Judge Prudenti, by administrative order, authorized special "pilot" parts designed to schedule these foreclosure cases even though a request for judicial intervention had not been filed. Thereafter, noting the success of the pilot courts in Kings and Queens Counties, with the advice and consent of the Administrative Board of the Courts, Judge Prudenti amended the Uniform Civil Rules of the Supreme and County Courts by adding a new section 202.12-a (b)(3) authorizing special calendars (no longer as pilots) for certain residential foreclosure actions (See Appendix B). In effect, the latter administrative order authorizes any court to schedule foreclosure cases even though a request for judicial intervention has not been filed.

Working with their County Clerks, the five civil supreme courts in New York City identified over 7,500 cases in the shadow inventory. Although the identification and scheduling of these matters was extremely resource intensive, Kings County began notifying homeowner-defendants to appear in court for a status conference in June 2012. Queens County began scheduling these matters shortly thereafter and the remaining three counties in New York City each followed. Legal service providers and housing counselors are present to confer with each homeowner who appears. Eligible cases, where the homeowners wish to proceed, are scheduled for a foreclosure settlement conference with the plaintiff lending institution. This effort has prompted plaintiffs to file requests for judicial intervention in over 800 of these cases.

While shadow inventories exist in counties outside of New York City, those County Clerks are not equipped to readily identify these cases and, more importantly, electronically share information with the courts in a useable format. Thus, only a handful of counties have been able to make any inroads with this inventory.

While current reports indicate that the ongoing shadow inventory project is a productive effort, getting homeowners to the foreclosure settlement conference earlier, when settlement is still a viable option, these conferences have thus far resulted in approximately 7,000 appearances. These conferences are in addition to the over 90,000 conference appearances discussed earlier.

Remarkably, after multiple years of grappling with the shadow inventory and its attendant workload, as of August 30, 2013, no new cases will enter this docket. As will be discussed in section VIII below, legislation was recently enacted that was designed to eliminate the shadow docket.

VIII. CERTIFICATE OF MERIT LEGISLATION

INTRODUCED TO THE LEGISLATURE at the request of the Chief Judge and Attorney General Eric Schneiderman, the Certificate of Merit bill was designed to address two issues that have been plaguing the courts for several years. The first is the practice of "robo-signing" and the second is the shadow inventory. The bill, a top legislative priority for the court system, was signed into law by Governor Cuomo on July 31, 2013. The legislation adds a new section 3012-b to the CPLR and became effective on August 30, 2013.

With respect to the robo-signing issue, as discussed at length in the prior reports, the Chief Judge sought to address that issue in 2010 by requiring the filing of an affirmation by the plaintiff certifying the accuracy of court documents. For all new cases, the affirmation was required at the time of the filing of the request for judicial intervention. The new legislation, in effect, advances that requirement by mandating the filing of a certificate of merit at the time the action is commenced.

To provide for the transition from the affirmation requirement to the certificate of merit requirement, on August 1, 2013 Chief Administrative Judge Prudenti issued Administrative Order 208/13 (See Appendix C). The order states that prior Administrative Order 431/11, requiring an affirmation at or after the filing of a request for judicial intervention, shall not apply to residential mortgage foreclosure actions commenced on or after August 30, 2013. The certificate of merit requirement will apply to all new cases filed on or after that date. The order further provides that for all such actions commenced prior to the effective date, plaintiffs may either comply with the provisions set forth in AO/431/11 or file a certificate of merit whose contents are described in CPLR 3012-b(a).

The passage of this legislation is critical to ensuring the integrity and transparency of the foreclosure process.

IX. FORECLOSURE SETTLEMENT CONFERENCE STATISTICS

ALL STATISTICS ARE REPORTED from October 9, 2012 (the first day of Term 11, the court term following the last term reported in 2012 Annual Report) through October 6, 2013 (the date concluding the last full term, Term 10, prior to this report) (See Appendix A).

- **Conferences Held** There were 91,522 conferences held in the reporting period referenced. This large increase in new case filings results in a significantly greater number of resource-intensive conferences.
- **Adjournments** There were 63,097 adjournments of settlement conferences statewide. While each case requires comprehensive attention throughout the conferencing phase, local administrative directives to avoid unnecessary and lengthy adjournments are in effect. Individual county reports make data metrics concerning appearances, adjournments and other relevant data readily available to local court administrators.
- **Defaults** There were 10,346 defaults recorded during the reporting period.
- **Discontinuances** During this reporting period 1,378 cases were discontinued by stipulation on consent of the litigants.
- **Dismissals** There were 640 dismissals reported during this period.
- **Representation** As noted in section VI, there has been a significant increase in the percentage of litigants represented at each conference appearance since the foreclosure crisis began. In the most recent budgetary period, the Chief Judge secured $40 million for civil legal service providers to represent the most vulnerable New Yorkers. Homeowners facing foreclosure are among those in greatest need of counsel. Since last October, more than 54 percent of homeowners had an attorney, a supervised law school clinic student or a housing counselor present at their conference. While this marks an increase from the last report, more needs to be done.

X. CONCLUSION

FORECLOSURE ACTIONS CONTINUE to represent a significant portion of the court's caseload. At 29 percent of all pending supreme court civil cases, these matters require attention, innovation and considerable resources.

The Chief Judge's commitment and focus have kept the foreclosure inventory a top priority for the court system. Together with the Attorney General, their attention and efforts were the driving force behind the passage of the certificate of merit legislation. The new legislative requirements will help ensure the integrity of the foreclosure process.

Individual courts continue their innovative pilot programs designed to bring the parties to the table as early as possible so that cases proceed in an expeditious and fair manner. The shadow inventory project is just one such example. Thousands of cases and court appearances were held, even before requests for judicial intervention were filed, in an effort to reach amicable resolutions at a point where settlement was still a viable option.

Despite a scarcity of resources, the court remains committed to affording all defendants representation at court-supervised settlement conferences. This report marks a period that has seen a tremendous spike in new foreclosure filings. As a result, the number of mandated settlement conferences has soared. And, the thousands of cases in the shadow inventory that entered the settlement conference parts with their attendant workload were significant. Despite these staggering statistics and challenges, the percentage of represented defendants still increased.

Much progress has been made in addressing the burgeoning foreclosure docket that continues to rise. Nevertheless, the courts will continue to implement new measures to meet the challenge of this growing inventory. We will be informed by the progress of the pilot programs, and our work done with partners in government, bar groups, the financial industry and civil legal service providers. As always, we strive to utilize our limited resources to bring these cases to a just and fair resolution.

APPENDIX A

NEW YORK STATE UNIFIED COURT SYSTEM

SUMMARY TABLE

October 9, 2012 – October 6, 2013

Conferences Held	91,522
Number of Adjournments	63,097
Defaults	10,346
Discontinuances	1,378
Dismissals	640
Defendants Appearing with Counsel*	44,943
Defendants Appearing without Counsel*	37,986

*Based upon the conferences held between October 9, 2012 and October 6, 2013, excluding appearances where the defendant defaulted.

APPENDIX B

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend the Uniform Civil Rules of the Supreme and County Courts by adding a new section 202.12-a(b)(3), relating to special calendars for certain residential foreclosure actions, effective immediately, to read as follows:

* * *

(b)(3) In such county or counties as the Chief Administrator shall direct, in the event that a plaintiff fails to file proof of service of the summons and complaint in a residential mortgage foreclosure action with the county clerk within one hundred twenty days after the commencement of the action, or fails to file the RJI at the time of the filing of proof of service, the county clerk shall provide the Chief Administrative Judge with the case name, index number, property address, and contact information of parties and counsel in the action. The Chief Administrator may take such further action as she deems fit with respect to such case or cases, including but not limited to (a) placing a case on a delinquency calendar; (b) providing case information to a housing counseling agency or agencies; and (c) ordering a status conference.

Chief Administrative Judge of the Courts

Dated: November 28, 2012

AO/ 517 /12

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