

Condensed Transcript

IN THE CIRCUIT COURT OF THE 13TH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY

CitiMortgage, Inc.,

Plaintiff,

-vs-

CASE NO.: 2009-CA-025391

DIVISION: B

Dean A. Horner and Nancy A. Horner,
Husband and Wife; JPMorgan Chase Bank,
National Association,

Defendants.

TRANSCRIPT OF PROCEEDINGS

HEARING HELD BEFORE

THE HONORABLE ROBERT A. FOSTER, JR.

June 18, 2010

9:00 a.m.

800 East Twiggs Street, Room 504

Tampa, Florida

Reported By:
Olivia Caldwell



ESQUIRE
an Alexander Gallo Company

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<p style="text-align: center;">1</p> <p style="text-align: center;">IN THE CIRCUIT COURT OF THE 13TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY</p> <p style="text-align: center;">CASE NO.: 2009-CA-025391 DIVISION: B</p> <p>CitiMortgage, Inc., Plaintiff, -vs- Dean A. Horner and Nancy A. Horner, Husband and Wife; JPMorgan Chase Bank, National Association, Defendants.</p> <hr/> <p style="text-align: center;">TRANSCRIPT OF PROCEEDINGS HEARING HELD BEFORE THE HONORABLE ROBERT A. FOSTER, JR. (Pages 1-130)</p> <p style="text-align: center;">Friday, June 18, 2010 9 a.m. - 12:30 p.m. Hillsborough County Courthouse 800 East Twiggs Street, Room 504 Tampa, Florida 33602</p> <hr/> <p>Reported By: Olivia Caldwell Notary Public State of Florida at Large Esquire Deposition Solutions - Tampa Office Phone - 813.221.2535, 800.838.2814 Esquire Job No. 168984</p>	<p style="text-align: center;">3</p> <p style="text-align: center;">INDEX</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 85%;"></th> <th style="width: 10%; text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>PROCEEDINGS</td> <td style="text-align: right;">5</td> </tr> <tr> <td>2</td> <td>WITNESS FOR THE DEFENDANTS:</td> <td></td> </tr> <tr> <td>3</td> <td>BRANDON MULLIS, ESQUIRE</td> <td></td> </tr> <tr> <td>4</td> <td> Direct examination by Mr. Stopa</td> <td style="text-align: right;">13</td> </tr> <tr> <td>5</td> <td> Cross-examination by Mr. Richman</td> <td style="text-align: right;">33</td> </tr> <tr> <td>6</td> <td>WITNESSES FOR THE PLAINTIFF:</td> <td></td> </tr> <tr> <td>7</td> <td>ILENE COOPER</td> <td></td> </tr> <tr> <td>8</td> <td> Direct examination by Mr. Richman</td> <td style="text-align: right;">51</td> </tr> <tr> <td>9</td> <td> Cross-examination by Mr. Stopa</td> <td style="text-align: right;">65</td> </tr> <tr> <td>10</td> <td>JENNIFER OAKES</td> <td></td> </tr> <tr> <td>11</td> <td> Direct examination by Mr. Richman</td> <td style="text-align: right;">90</td> </tr> <tr> <td>12</td> <td> Cross-examination by Mr. Stopa</td> <td style="text-align: right;">91</td> </tr> <tr> <td>13</td> <td> Redirect examination by Mr. Mr. Richman</td> <td style="text-align: right;">102</td> </tr> <tr> <td>14</td> <td> Recross-examination by Mr. Stopa</td> <td style="text-align: right;">107</td> </tr> <tr> <td>15</td> <td>CERTIFICATE OF REPORTER</td> <td style="text-align: right;">130</td> </tr> <tr> <td>16</td> <td></td> <td></td> </tr> <tr> <td>17</td> <td></td> <td></td> </tr> <tr> <td>18</td> <td></td> <td></td> </tr> <tr> <td>19</td> <td></td> <td></td> </tr> <tr> <td>20</td> <td></td> <td></td> </tr> <tr> <td>21</td> <td></td> <td></td> </tr> <tr> <td>22</td> <td></td> <td></td> </tr> <tr> <td>23</td> <td></td> <td></td> </tr> <tr> <td>24</td> <td></td> <td></td> </tr> <tr> <td>25</td> <td></td> <td></td> </tr> </tbody> </table>			PAGE	1	PROCEEDINGS	5	2	WITNESS FOR THE DEFENDANTS:		3	BRANDON MULLIS, ESQUIRE		4	Direct examination by Mr. Stopa	13	5	Cross-examination by Mr. Richman	33	6	WITNESSES FOR THE PLAINTIFF:		7	ILENE COOPER		8	Direct examination by Mr. Richman	51	9	Cross-examination by Mr. Stopa	65	10	JENNIFER OAKES		11	Direct examination by Mr. Richman	90	12	Cross-examination by Mr. Stopa	91	13	Redirect examination by Mr. Mr. Richman	102	14	Recross-examination by Mr. Stopa	107	15	CERTIFICATE OF REPORTER	130	16			17			18			19			20			21			22			23			24			25																																																	
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<p style="text-align: center;">2</p> <p>1 APPEARANCES: 2 BARBARA A. COUTURE, ESQUIRE 3 Shapiro & Fishman, LLP 4 10004 North Dale Mabry Highway, Suite 112 5 Tampa, Florida 33618 6 813.880.8888 7 bcouture@logs.com</p> <p>8 On behalf of Plaintiff CitiMortgage, Inc.</p> <p>9 GERALD F. RICHMAN, ESQUIRE 10 LEORA B. FREIRE, ESQUIRE 11 Richman Greer Professional Association 12 201 South Biscayne Boulevard, Suite 1000 13 Miami, Florida 33131 14 305.373.4000 15 grichman@richmangreer.com 16 lfreire@richmangreer.com 17 On behalf of Plaintiff Brandon Mullis, Shapiro & 18 Fishman, LLP</p> <p>19 ROBERT M. BROCHIN, ESQUIRE 20 Morgan, Lewis & Bockius, LLP 21 200 South Biscayne Boulevard, Suite 5300 22 Miami, Florida 33131 23 305.415.3456 24 rbrochin@morganlewis.com 25 On behalf of Plaintiff Mortgage Electronic Registration Systems, Inc.</p> <p>MARK P. STOPA, ESQUIRE PHILIP HEALY, ESQUIRE Stopa Law Firm 2202 North Westshore Boulevard, Suite 200 Tampa, Florida 33607 727.667.3413</p> <p>On behalf of the Defendants</p>	<p style="text-align: center;">4</p> <p style="text-align: center;">INDEX OF EXHIBITS</p> <p>1 PLAINTIFFS:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 70%;"></th> <th style="width: 10%;"></th> <th style="width: 10%; text-align: right;">OFFERED</th> <th style="width: 10%; text-align: right;">RECEIVED</th> </tr> </thead> <tbody> <tr> <td>2</td> <td>NO. DESCRIPTION</td> <td></td> <td></td> <td></td> </tr> <tr> <td>3</td> <td>1 Corporate Resolution</td> <td style="text-align: right;">57</td> <td style="text-align: right;">57</td> <td></td> </tr> <tr> <td>4</td> <td>2 Waiver of Conflict</td> <td style="text-align: right;">62</td> <td style="text-align: right;">62</td> <td></td> </tr> <tr> <td>5</td> <td>3 Welcome Letter</td> <td style="text-align: right;">105</td> <td style="text-align: right;">106</td> <td></td> </tr> <tr> <td>6</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>7</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>8</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>9</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>10</td> <td>DEFENDANTS:</td> <td></td> <td></td> <td></td> </tr> <tr> <td>11</td> <td>NO. DESCRIPTION</td> <td></td> <td style="text-align: right;">OFFERED</td> <td style="text-align: right;">RECEIVED</td> </tr> <tr> <td>12</td> <td>1 Notice of Appearance</td> <td style="text-align: right;">5</td> <td style="text-align: right;">8</td> <td></td> </tr> <tr> <td>13</td> <td>2 MERS Document</td> <td style="text-align: right;">5</td> <td style="text-align: right;">8</td> <td></td> </tr> <tr> <td>14</td> <td>3 10/13/09 Assignment of Mortgage</td> <td style="text-align: right;">9</td> <td style="text-align: right;">11</td> <td></td> </tr> <tr> <td>15</td> <td>4 10/07/09 Assignment of Mortgage</td> <td style="text-align: right;">9</td> <td style="text-align: right;">11</td> <td></td> </tr> <tr> <td>16</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>17</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>18</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>19</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>20</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>21</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>22</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>23</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>24</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>25</td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>				OFFERED	RECEIVED	2	NO. DESCRIPTION				3	1 Corporate Resolution	57	57		4	2 Waiver of Conflict	62	62		5	3 Welcome Letter	105	106		6					7					8					9					10	DEFENDANTS:				11	NO. DESCRIPTION		OFFERED	RECEIVED	12	1 Notice of Appearance	5	8		13	2 MERS Document	5	8		14	3 10/13/09 Assignment of Mortgage	9	11		15	4 10/07/09 Assignment of Mortgage	9	11		16					17					18					19					20					21					22					23					24					25				
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<p style="text-align: center;">5</p> <p>1 PROCEEDINGS</p> <p>2 THE COURT: My understanding is you've agreed to</p> <p>3 disagree. So we have -- anybody want to ask me any</p> <p>4 questions before we get started?</p> <p>5 MR. STOPA: Not me, Judge.</p> <p>6 THE COURT: Okay. Great. It's your motion.</p> <p>7 MR. STOPA: Thank you, Judge. I have a lot of</p> <p>8 case law and legal argument here, but I think that we</p> <p>9 need to see how some of the evidence fleshes out</p> <p>10 before we get into some of that. So what I wanted to</p> <p>11 do first was introduce two certified copies of</p> <p>12 documents that we had asked this Court to take</p> <p>13 judicial notice of.</p> <p>14 THE COURT: Are they in the court file?</p> <p>15 MR. STOPA: Yes, they are.</p> <p>16 THE COURT: Okay. Any objection?</p> <p>17 MR. STOPA: Well, the certified copies are not.</p> <p>18 I have the certified copies here.</p> <p>19 THE COURT: Okay. Any objection?</p> <p>20 MR. RICHMAN: No objection, Your Honor.</p> <p>21 THE COURT: Thank you.</p> <p>22 MR. STOPA: And this is -- I guess I should have</p> <p>23 labeled them 1 and 2, Defendants' 1 and Defendants'</p> <p>24 2.</p> <p>25 MR. RICHMAN: Hold on just one moment. If I</p>	<p style="text-align: center;">7</p> <p>1 Fishman representing CitiMortgage in this case. It</p> <p>2 has no objection. There's no conflict. MERS is not</p> <p>3 a party to this case, but it has no objection. Yes.</p> <p>4 Shapiro & Fishman has represented MERS in the past</p> <p>5 and may do so in the future --</p> <p>6 THE COURT: Okay.</p> <p>7 MR. BROCHIN: -- but it is perfectly appropriate</p> <p>8 with MERS and MERS would stipulate that Shapiro &</p> <p>9 Fishman has no conflict and they may represent</p> <p>10 CitiMortgage. It really comes down to as simple as</p> <p>11 that.</p> <p>12 THE COURT: Okay.</p> <p>13 MR. RICHMAN: And if I may, Your Honor, under the</p> <p>14 rule it says -- even under their argument under 4-1.7</p> <p>15 each affected client is informed consent, confirmed</p> <p>16 in writing, or clearly stated on the record at a</p> <p>17 hearing -- stated on the record at a hearing would</p> <p>18 have had just no basis for it.</p> <p>19 THE COURT: Okay.</p> <p>20 MS. COUTURE: Yes, Your Honor --</p> <p>21 THE COURT: You represent --</p> <p>22 MS. COUTURE: -- I represent Shapiro & Fishman</p> <p>23 and CitiMortgage, so we have a client outside -- a</p> <p>24 representative outside who will --</p> <p>25 THE COURT: Why don't you just tell me what they</p>
<p style="text-align: center;">6</p> <p>1 may --</p> <p>2 THE COURT: They are just being marked right now.</p> <p>3 They have not been accepted into evidence.</p> <p>4 MR. RICHMAN: My objection, Your Honor, is that I</p> <p>5 don't know what the basis is or certain basis for</p> <p>6 introducing any of this into evidence.</p> <p>7 THE COURT: What is the relevance?</p> <p>8 MR. STOPA: The relevance, Judge, is the first</p> <p>9 one, the Notice of Appearance, this is a document</p> <p>10 filed in the 7th Judicial Circuit in which Shapiro &</p> <p>11 Fishman is acting as counsel in a pending case for</p> <p>12 Mortgage Electronic Registration Systems, Inc.,</p> <p>13 against -- adverse to CitiMortgage, Inc., which goes</p> <p>14 directly to the issue of conflict under 4-1.7 because</p> <p>15 in this case Shapiro & Fishman is representing</p> <p>16 CitiMortgage, Inc., adverse to Mortgage Electronic</p> <p>17 Registration Systems.</p> <p>18 MR. RICHMAN: We absolutely don't agree with</p> <p>19 that. There's nothing in this case indicating that</p> <p>20 Shapiro & Fishman are in any way adverse to MERS.</p> <p>21 THE COURT: Well, what he's saying is -- because</p> <p>22 they're just plaintiff and defendant at some point in</p> <p>23 time, but you can waive that. That's another case.</p> <p>24 Let me hear --</p> <p>25 MR. BROCHIN: MERS has no objection to Shapiro &</p>	<p style="text-align: center;">8</p> <p>1 would say if they were called as a witness.</p> <p>2 MS. COUTURE: She will proffer the evidence that</p> <p>3 there is no conflict, and I actually do have a signed</p> <p>4 waiver from her as well.</p> <p>5 THE COURT: Hand it to me.</p> <p>6 MS COUTURE: I'll have to get that from her.</p> <p>7 THE COURT: Okay.</p> <p>8 MR. STOPA: Judge, I'm not trying to argue the</p> <p>9 entire merits of the motion at this stage. All I'm</p> <p>10 trying to do is introduce these two documents --</p> <p>11 THE COURT: You can, but there's going to be a</p> <p>12 waiver is what I'm hearing.</p> <p>13 MR. STOPA: Well, I --</p> <p>14 THE COURT: Any conflict is going to be waived is</p> <p>15 what I'm hearing from counsel --</p> <p>16 MR. RICHMAN: Yes, sir.</p> <p>17 THE COURT: -- and I'll accept that on its face,</p> <p>18 but I will also take in your evidence for whatever</p> <p>19 value and I'll weigh it any way that I want to weigh</p> <p>20 it, give whatever weight I want to give to it; but if</p> <p>21 I have a waiver on an attorney-client relationship, I</p> <p>22 have to assume that it's knowing and intelligently</p> <p>23 done and I will have to accept it as such. And I</p> <p>24 have been proffered that they have written that, an</p> <p>25 affidavit, and they have a witness outside, so with</p>



9

1 that I'll accept it on that condition.
 2 MR. STOPA: So the Notice of Appearance, Defense
 3 1; the defendant Mortgage Electronic Registration
 4 Systems, Inc., as nominee for CitiMortgage counselor
 5 in affirmative defenses is Defense 2.
 6 THE COURT: Your two documents are accepted.
 7 Thank you.
 8 MR. STOPA: Thank you, Judge. The next issue
 9 that I have is with respect to the -- trying to get
 10 some of the evidentiary issues out of the way here,
 11 the assignments of mortgage that are attached to
 12 motion to disqualify.
 13 MR. RICHMAN: We have no objection, Your Honor,
 14 on the grounds of authenticity; but, again, I'm
 15 assuming Your Honor is going to take it for whatever
 16 it's worth.
 17 THE COURT: I am.
 18 MR. RICHMAN: Our objection is on the merits,
 19 that it has absolutely no bearing, not attempting to
 20 show that there's any adversity or any violation of
 21 any form whatsoever --
 22 MR. STOPA: The first one -- I'm sorry.
 23 MR. RICHMAN: -- and that it's not relevant to
 24 any issue in this case, which is the issue of the
 25 right to be able to foreclose the mortgage based upon

10

1 the undisputed fact that the note is in the court
 2 file and that the proper note holder is the plaintiff
 3 in this case. And that being -- and the reason, Your
 4 Honor, if I may note that is in the transcript before
 5 Your Honor that led to the hearing in this case,
 6 there was a specific representation on page 18 by
 7 counsel for the defendant to the effect that the
 8 issue of who holds the note is disputed.
 9 And I don't -- I believe that's misleading
 10 to the Court because there's no issue here since the
 11 note has been filed with the Court and filed -- it's
 12 in the name of the plaintiff in this case. So there
 13 is not a disputed issue as to the note and, Your
 14 Honor, based upon the comments even that Your Honor
 15 made at the last hearing is well familiar with the
 16 fact that the party who has the right to foreclose in
 17 the proceeding is the party who holds the note.
 18 THE COURT: I have the note in my hand.
 19 MR. RICHMAN: Yes, sir.
 20 THE COURT: It was filed in the court file.
 21 MR. RICHMAN: And that's exactly the point.
 22 There's -- as far as I know, there's no evidence that
 23 there's any dispute with regard to that note
 24 whatsoever.
 25 MR. STOPA: I feel like we're getting really off

11

1 track here to the extent he's talking about the
 2 original note. I have not seen any evidence that
 3 that's the original note. My client --
 4 THE COURT: You can sit down. I have the court
 5 file.
 6 MR. STOPA: My client doesn't agree that that's
 7 the original note, and I haven't seen any evidence
 8 that it is. And Counsel's making all these
 9 assertions about things being undisputed and stuff
 10 without presenting any evidence at all. I think the
 11 point at this point is I'm trying to introduce these
 12 two assignments of mortgage.
 13 THE COURT: They've been accepted.
 14 MR. STOPA: Okay. If they have a signed waiver
 15 then I'd like to be able to see that, especially to
 16 the extent Your Honor ordered them to provide it.
 17 THE COURT: They're accepted. You all may want
 18 to look at the motion and the affidavit, and I invite
 19 everyone to look at the motion and affidavit and the
 20 original note that's been filed in this case. You
 21 all are welcome to look at it and compare signatures,
 22 and I suggest that you do.
 23 MR. RICHMAN: Shall we approach, Your Honor?
 24 THE COURT: Yes, I'm inviting you all up here,
 25 and while we're here do you wish MERS to remain here

12

1 or are they free to go?
 2 MR. STOPA: Who is here for MERS other than
 3 the --
 4 MR. BROCHIN: I'm not here as a witness.
 5 THE COURT: You're here as counsel?
 6 MR. BROCHIN: I'm just here as counsel.
 7 THE COURT: Do you want to stay?
 8 MR. BROCHIN: I'd like to.
 9 THE COURT: Okay. Thank you.
 10 MR. RICHMAN: Thank you, Your Honor.
 11 THE COURT: Please proceed.
 12 MR. STOPA: Judge, I would call Brandon Mullis to
 13 the stand.
 14 THE COURT: Okay. How do you spell the name
 15 Mullis?
 16 MR. STOPA: Brandon Mullis.
 17 THE COURT: Mullis?
 18 MR. RICHMAN: Yes, sir.
 19 THE COURT: Who is Mr. Mullis?
 20 MR. RICHMAN: Brandon Mullis, Your Honor, is an
 21 attorney with the firm of Shapiro & Fishman --
 22 THE COURT: Okay.
 23 MR. RICHMAN: -- who has been subpoenaed in this
 24 case.
 25 THE COURT: Okay. Come on, sir. How are you?



<p style="text-align: center;">13</p> <p>1 Come on up here. What is your name? 2 THE WITNESS: Brandon Mullis. 3 THE COURT: And you're an attorney licensed by 4 the Florida Bar? 5 THE WITNESS: Yes. 6 THE COURT: And you're in good standing? 7 THE WITNESS: Yes. 8 THE COURT: You may inquire. 9 MR. STOPA: Thank you, Judge. 10 THEREUPON, 11 BRANDON MULLIS, ESQUIRE, 12 called as a witness on behalf of the Defendants, having 13 been duly sworn or affirmed, was examined and testified 14 as follows: 15 DIRECT EXAMINATION 16 BY MR. STOPA: 17 Q Good Morning. I'm Mark Stopa, counsel for the 18 defendant. 19 A. Good morning. 20 MR. STOPA: May I approach the witness with those 21 two assignments, Judge? 22 THE COURT: Yes. 23 MR. STOPA: I have extra copies of these. I 24 don't want to lose the Court's copies. 25 THE COURT: Okay.</p>	<p style="text-align: center;">15</p> <p>1 A. I'm not sure. Presumably because I was handling 2 Hillsborough County at the time and it says "prepared by 3 Shapiro & Fishman" and returned to me. This is a 4 Hillsborough County case. I was handling Hillsborough 5 County at the time. 6 Q. What do you mean by "handling Hillsborough 7 County"? 8 A. I was representing our firm on Hillsborough 9 County actions at that particular time. 10 Q. Who prepared this document? 11 A. I'm not sure. 12 Q. You don't have any idea? 13 A. I don't have any idea. 14 Q. It's your job to handle mortgage foreclosure 15 cases for Shapiro & Fishman? 16 A. That's correct, but I do not prepare the 17 assignments of mortgage. 18 Q. And you don't have any idea who prepared it? 19 A. Presumably our assignment of mortgage department. 20 I don't know any particular individual that prepared 21 these assignments though. 22 Q. Why was it prepared? 23 A. I can't answer that. Presumably to form evidence 24 to transfer the note and mortgage. 25 Q. The assignment of mortgage was prepared to</p>
<p style="text-align: center;">14</p> <p>1 BY MR. STOPA: 2 Q. Mr. Mullis, I'd like to start by talking with you 3 about the document called assignment of mortgage that is 4 dated -- which I handed to you that is dated October 5 13th, 2009, Judge's Defense 4. Do you see that? 6 A. Yes. 7 Q. Is that your name at the top of the page, 8 Brandon K. Mullis? 9 A. Yes, it is. 10 Q. Where it says "prepared by" and "returned to"? 11 A. Yes, it is. 12 THE COURT: Actually, it's 3, I think. I just 13 want to make sure. The one that's dated the -- 14 MR. STOPA: I tried to keep them in date order. 15 THE COURT: I've got 13th of October for the 16 record. The record that I have is dated 3. 17 MR. STOPA: Okay. 18 THE COURT: I mean it's Exhibit 3 -- 19 MR. STOPA: Okay. 20 THE COURT: -- just so you'll know. 21 MR. STOPA: Okay. Thank you. 22 BY MR. STOPA: 23 Q. You prepared this document? 24 A. No, I did not. 25 Q. Why does it contain your name at the top?</p>	<p style="text-align: center;">16</p> <p>1 evidence the transfer of the note and mortgage? Is that 2 what you said, sir? 3 A. I presume. 4 Q. Is there any other reason why it would be 5 prepared? 6 A. I did not prepare the assignment of mortgage. I 7 did not direct that it be prepared. I did not speak 8 with anybody regarding it's preparation. 9 Q. Why is it that your name is at the top of this 10 document? 11 A. Because I was handling our Hillsborough County 12 actions at that particular time. 13 Q. Who is Jamie Hardcastle, whose name appears on 14 page 2 of the document? 15 A. I'm not familiar with that individual. 16 Q. Have you ever spoken with her? 17 A. No. 18 Q. You don't have any idea who she is? 19 A. I have not spoken with her. 20 Q. How about Nate Blackstone, who is he? 21 A. I have not spoken with him either. 22 Q. You don't have any idea who he is? 23 A. No. 24 Q. Would it surprise you if I told you that they are 25 employees of CitiMortgage, Inc.?</p>



<p>17</p> <p>1 A. I have no knowledge of either of those 2 individuals. 3 Q. Would it surprise you if I told you that? 4 A. I don't have an answer to that because I don't 5 know who those two individuals are. 6 Q. Is it fair to say that this is a document that 7 you were to use to assist you in the prosecution of a 8 mortgage foreclosure lawsuit? 9 A. No. 10 Q. It's not fair to say? 11 A. To my knowledge I didn't prepare the document. I 12 didn't file the document. So I didn't prepare it or 13 file it in preparation of the -- or in the proceeding of 14 the foreclosure action, no. 15 Q. So is it your position then that it's a 16 coincidence that this was dated right around the time 17 that this mortgage foreclosure case was filed? 18 A. Again, I didn't prepare the assignment of 19 mortgage. 20 Q. Okay. My question was, is it your position that 21 it's a coincidence that it was done around the same time 22 as when the -- 23 A. Those were your words. I didn't say it was a 24 "coincidence." I'm assuming it's somehow related to the 25 transfer of the note and mortgage in the proceedings,</p>	<p>19</p> <p>1 the document. 2 Q. I didn't ask if you prepared it. What I'm trying 3 to understand is what your role is when your name is at 4 the top of this page is, what your role is in general 5 with respect to assignments of mortgage such as this? 6 A. I didn't prepare the document. My name is on 7 there solely because of the fact that I was handling 8 Hillsborough County at that particular time. I did not 9 receive the document. I did not review the document. I 10 did not prepare the document. I did not speak with 11 anybody about the document. 12 Q. Who would have caused -- let's strike that and 13 start it over. Is there someone at Shapiro & Fishman 14 whose job it is to ensure that assignments of mortgage 15 such as this are recorded? 16 A. Assuming that there would be somebody in our 17 assignment of mortgage department. I don't have any 18 individual names. I don't deal with our assignment of 19 mortgage department. I don't speak with anybody in our 20 assignment of mortgage department. 21 Q. So Shapiro & Fishman has an assignment of 22 mortgage department? 23 A. It is a separate department. 24 Q. How many employees are in that department? 25 A. I don't know. I know our firm has approximately</p>
<p>18</p> <p>1 but I didn't prepare the document and I'm not saying 2 it's a coincidence it was prepared the same time. 3 Q. What were you to do with this document when it 4 was returned to you? 5 A. I've never seen this document. The first time I 6 saw this document is when you filed it. 7 Q. Okay. How about assignments of mortgage in 8 general. It's common for assignments of mortgage, such 9 as this, to have your name at the top, correct? 10 A. That's correct. 11 Q. So what is it -- from a general procedural 12 standpoint, what is that you do with these documents 13 when you receive them? 14 A. I believe these are filed in the county clerk's 15 records to put other creditors on notice. 16 Q. So as a matter of standard procedure you cause 17 assignments of mortgage such as this to be recorded in 18 the public record? 19 A. I did not cause this to be recorded in the public 20 record. I didn't prepare the document. I didn't file 21 the document. 22 Q. You assist in ensuring that assignments of 23 mortgage such as this are recorded in the public record? 24 A. I didn't assist in ensuring that this was filed. 25 Again, I did not prepare the document. I did not file</p>	<p>20</p> <p>1 215 employees. I don't know how many are in that 2 particular department though. 3 Q. More than ten? 4 A. Again, I have no idea. 5 Q. Who would have an idea? 6 A. I believe Ilene Cooper, who is the office 7 manager, would be able to testify better to that effect. 8 She's here today. 9 Q. She's the office manager of Shapiro & Fishman? 10 A. Yes. 11 Q. And she's here today you said? 12 A. Yes. 13 Q. From a matter of general procedure, who is it 14 that executes assignments of mortgage such as these? 15 A. I have no knowledge. I don't prepare the 16 assignments of mortgage. I don't send those to anybody. 17 You asked me about the names on the actual assignments 18 of mortgage. I'm not familiar with these two 19 individuals. 20 Q. I didn't ask about these two individuals. I 21 asked from a matter of general procedure, who is it that 22 signs these assignments of mortgage? 23 A. Presumably somebody that has the authority to 24 sign on behalf of the assignor and the assignee. 25 Q. The assignor and the assignee?</p>



<p>21</p> <p>1 A. On behalf of the assignor. 2 Q. Why would the person signing have to have 3 authority for the assignee? 4 A. I'm not sure what your question is. 5 Q. Well, you said that the person signing would have 6 to have authority of the assignee. Why would that be? 7 A. They would have to have authority from the 8 assignor. 9 Q. Okay. And the assignee. That's what you said a 10 minute ago. Why did you say that? 11 A. I'm not sure what your question is and I'm not 12 sure what your question is directed at. I don't have 13 the authority to sign the assignments or mortgage. 14 Q. Is it an agent of the assignee that typically 15 signs these assignments of mortgage? Isn't that why you 16 just said that a minute ago? 17 A. I don't have any knowledge with regard to who 18 signs the assignments of mortgage. I believe I 19 testified to that a few minutes ago. I don't have any 20 knowledge who was an approved individual to sign these 21 on behalf of the assignor, nor do I have any knowledge 22 as to procedures with regards to the preparation of the 23 assignments. 24 Q. You represent CitiMortgage, Inc., in this case, 25 correct?</p>	<p>23</p> <p>1 have -- we're assigned to different counties. When I 2 was in the uncontested division, I was assigned to 3 Hillsborough County. 4 Q. You were subpoenaed to come here today, correct? 5 A. Yes. 6 MR. STOPA: If I may approach the witness with 7 the subpoena? 8 THE COURT: Yes. 9 MR. STOPA: 10 Q. Attached to the subpoena was a duces tecum, 11 correct? 12 A. Yes. 13 Q. Do you have any of these documents on the 14 attached subpoena with you today? 15 A. I've got a copy of the assignment of mortgage and 16 that's the only document that I have access to. It's 17 the only document that I've reviewed. I don't have any 18 other documents that you've requested. I've reviewed 19 these documents, but they're not in my possession, nor 20 do I have access to them. 21 Q. Did you attempt to obtain copies of any of these 22 documents from anyone at Shapiro? 23 A. I have no access to any of these documents. 24 Q. That wasn't my question. My question was, did 25 you attempt to obtain these documents from your</p>
<p>22</p> <p>1 A. I was involved in this case at one time for a 2 brief period of time. 3 Q. Prior to -- well, let's start that over. What do 4 you mean "for a brief period of time"? 5 A. I think I may have filed one thing in this 6 particular case. I'm not sure what I've filed. I know 7 that I was handling Hillsborough County at the time so I 8 believe my name is probably on the complaint. Other 9 than that, I don't really have any knowledge of this 10 particular case. 11 Q. Was there a time when you were taken off of this 12 case? 13 A. There was a time when this case was transferred 14 over to our contested department. 15 Q. And that is when you were taken off of the case? 16 A. Yes. 17 Q. So you work in the uncontested department of 18 Shapiro & Fishman? 19 A. Well, I'm now in the contested department, but I 20 was in the uncontested department for a period of time. 21 Q. So now that you're in the contested department, 22 is this one of your cases? 23 A. No. 24 Q. Why not? 25 A. I no longer handle Hillsborough County. We</p>	<p>24</p> <p>1 employer? 2 A. I printed off the assignment of mortgage. It was 3 in our file. There's no written correspondence or 4 communications in our file. I examined our entire file. 5 None of these documents are in our file. 6 Q. Okay. When you say you examined your file, what 7 do you mean? What did you examine? 8 A. All the documents that we have in our file and 9 they're not on this list. The documents that you're 10 requesting are not in our file. We have no 11 communications -- no written communications or written 12 correspondence with any of the parties that you've 13 listed on here, nor is there any written communication 14 that I've ever had. The only thing that I have access 15 to is a copy of the assignment of mortgage, which you 16 have filed in the record that has my name on it. 17 Q. Who would have access to these other documents? 18 A. Presumably Ilene Cooper. 19 Q. Do you know if she has any of these documents 20 with her? 21 A. I don't know if she does or not. 22 Q. Prior to filing the lawsuit in this case for 23 CitiMortgage, Inc., did Shapiro & Fishman run any sort 24 of conflict check? 25 A. I wouldn't have access to that.</p>



<p>25</p> <p>1 Q. Did you sign any sort of document indicating 2 whether or not you had any sort of conflict prior to the 3 case being filed? 4 A. I did not. 5 Q. Have you ever signed any sort of conflict form 6 prior to filing any sort of lawsuit? 7 A. No. 8 Q. Have you ever seen any sort of conflict check 9 form within Shapiro & Fishman? 10 A. That would not be something that I would have 11 access to. I don't deal directly with our clients. I 12 don't deal with conflicts. If they exist, I wouldn't 13 have any access to that information. 14 Q. Okay. I'm not necessarily asking about conflict 15 forms with the client, I'm asking about an internal 16 conflict form that would be distributed among the 17 attorneys of Shapiro & Fishman wherein Shapiro & Fishman 18 is asking attorneys at its firm, such as yourself, 19 whether or not there was any conflicts in representing 20 CitiMortgage, Inc., in this case? 21 A. I have not seen a conflict form. 22 Q. Have you ever seen such a form like that at any 23 time at Shapiro -- 24 A. No. 25 Q. -- in any case?</p>	<p>27</p> <p>1 of mortgage that is Defense 3? 2 A. I can't explain that because I didn't prepare the 3 assignment of mortgage. I didn't put the address in 4 there. Presumably it was returned to us because at the 5 top it says "prepared by" and "returned to Shapiro & 6 Fishman." 7 Q. Okay. And I'm asking where it says right 8 underneath assignment of mortgage on the second line. 9 Do you see where it says "CO: Shapiro & Fishman, LLP"? 10 A. I see that. 11 Q. Now 2424 North Federal Highway, Suite 360, Boca 12 Raton, whose address is that? 13 A. Presumably the Shapiro & Fishman office in Boca 14 Raton. 15 Q. But you don't have any knowledge as to why that's 16 there instead of an address for Mortgage Electronic 17 Registration Systems, Inc.? 18 A. Again, I didn't prepare the assignment of 19 mortgage; so no, I don't have any knowledge to that. 20 Q. Do you know whether First Security Mortgage 21 Services, Inc., has consented to this assignment? 22 A. They are a member of MERS, Mortgage Electronic 23 Registration Systems, so I'm assuming they have some 24 type of membership agreement with Mortgage Electronic 25 Registration Systems.</p>
<p>26</p> <p>1 A. No, I do not have any type of conflict forms that 2 were provided to me. 3 Q. To your knowledge have any other attorneys within 4 Shapiro & Fishman ever signed any sort of conflict check 5 form or anything like that? 6 A. I'm not sure. 7 Q. So not to your knowledge? 8 A. Not to my knowledge. 9 Q. Are there any sort of conflict checks that are 10 ever done verbally with respect to Shapiro & Fishman's 11 ability to represent a plaintiff in a case? 12 A. Not by myself. I do not have any communications 13 with our clients prior to filing actions. That would be 14 something that's actually handled by our office manager, 15 I believe. 16 Q. Do you deny that Shapiro & Fishman was 17 representing Mortgage Electronic Registration Systems, 18 Inc., with respect to its assignment of mortgage in this 19 case? 20 A. Yes. As far as I know we do not represent 21 Mortgage Electronic Registration Systems with regards to 22 the transfer. 23 Q. Then please explain why Shapiro & Fishman's 24 address is listed in place of the address of Mortgage 25 Electronic Registration Systems, Inc., on the assignment</p>	<p>28</p> <p>1 Q. How do you know of them to be a member of MERS? 2 A. It's on the mortgage. The mortgage references 3 Mortgage Electronic Registration Systems as nominee for 4 First Security Services -- First Security Mortgage 5 Services. I believe that is listed on the actual 6 mortgage itself. 7 THE COURT: I have a copy of the mortgage in the 8 court file. I haven't seen the original mortgage, so 9 I don't -- 10 THE WITNESS: I don't have a copy of the mortgage 11 with me. I'm assuming it's on there. I didn't 12 prepare the assignment of mortgage, so -- 13 THE COURT: But the original mortgage is the 14 Irwin Mortgage Corporation, attention final 15 documents, P.O. Box 6107, Indianapolis, Indiana. And 16 then it says, "This document was prepared by Deborah 17 A. Elliot, First Security Mortgage Services, 13915 18 Carrollwood Village Run, Tampa, Florida 36124." And 19 then it says "return to the title source of Tampa 20 Bay, Inc., 1200 West Cass Street, Tampa, Florida 21 33606." It says the lender is First Security 22 Mortgage Services, Inc., which is also the lender 23 stated on the note, First Security Mortgage Services, 24 Inc., so everybody knows. 25 MR. STOPA: If I may approach the witness with</p>



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1 the copy of the complaint?

2 THE COURT: Thank you.

3 BY MR. STOPA:

4 Q I'm showing you a copy of the complaint that's

5 been filed in this case. I'm going to ask you to turn

6 to page 4.

7 A. Yes.

8 Q. Is that your name on the complaint?

9 A. That's my name on the complaint.

10 Q. Is that because you prepared this?

11 A. No, I didn't prepare the complaint. It's

12 actually signed by Megan -- I can't pronounce the last

13 name, but I didn't review the complaint and I didn't

14 sign the complaint.

15 THE COURT: It looks like the original complaint

16 that I have in the court file that says "by

17 Brandon K. Mullis," and then it says "Megan J." --

18 excuse me. "Megan, M-e-g-a-n, K. Gajewski,

19 G-a-j-e-w-s-k-i, for Brandon K. Mullis. That's what

20 it says. That's in the court file. Anybody wants to

21 see it, I'm more than happy to share it with you, but

22 that's what it says in the court file.

23 MR. STOPA: I'd be curious to see that because I

24 can't see that from the copy I have here. Oh, that's

25 because my stamp didn't show up like yours did.

30

1 Okay.

2 THE COURT: For anybody that cares Mr. Mullis's

3 bar number is 0023217, and Ms. Gajewski's is 60843.

4 BY MR. STOPA:

5 Q. So you were counsel of record for Shapiro &

6 Fishman in this case?

7 A. Presumably since my name is on the complaint;

8 however I did not review the complaint, I did not file

9 the complaint. Generally what happens is if an attorney

10 is out of the office, some other attorneys will review

11 these complaints and file them. My name is pulled into

12 the complaint because I was handling Hillsborough County

13 at the time and, again, this is a Hillsborough County

14 action. Other than that, I did not actually review this

15 complaint and file it.

16 Q. So you don't know whether First Security Mortgage

17 Services, Inc., has consented to the relief requested in

18 the complaint?

19 A. I have not spoken with anybody from First

20 Security Mortgages regarding the complaint.

21 C. And as far as you know, if I wanted to talk to

22 somebody about the preparation of the complaint it would

23 be Megan, the attorney who signed it?

24 A. Either her or Ilene Cooper would have information

25 about that.

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1 Q. Was there a -- did you participate in a meeting

2 before the hearing today in the attorney lounge down the

3 hall?

4 A. Yes, I did.

5 Q. What did you talk about in the meeting?

6 MR. RICHMAN: Your Honor, that's privileged. We

7 certainly object to that.

8 THE COURT: Are you asserting attorney-client

9 privilege? Is that what --

10 MR. RICHMAN: Yes.

11 THE COURT: He asserts that, and I will honor

12 that.

13 BY MR. STOPA:

14 Q. Who was sitting in the room?

15 A. I believe Mr. Richman was sitting there;

16 Ms. Couture was sitting there; Ms. Cooper; and the other

17 individuals I don't know.

18 Q. Was this attorney there, the attorney from MERS

19 sitting in there as well?

20 A. Yes.

21 MR. STOPA: Judge, there would be no

22 attorney-client privilege to the extent that there

23 were others in the room other than the specific

24 attorney for Mr. Mullis.

25 THE COURT: That's the privilege, I guess, that's

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1 being asserted, but he's also the attorney -- he's an

2 attorney for Shapiro & Fishman, he's an attorney for

3 Citibank, and I'm assuming he has authorization to be

4 for MERS; is that correct?

5 MR. BROCHIN: Yes, Your Honor. Plus, I would say

6 there's also a joint defense privilege in the sense

7 that we have common interests at hand that would

8 invoke the privilege.

9 THE COURT: The objection is sustained, but your

10 objection is noted. I understand.

11 MR. STOPA: I simply note that CitiMortgage and

12 MERS are taking the position that they have a joint

13 defense --

14 MR. BROCHIN: No.

15 MR. STOPA: -- joint defense agreement is what he

16 just said.

17 MR. BROCHIN: That's not what I just said. I

18 said we have common interests in this motion; and

19 since we have a common interest in the motion, I

20 believe the privilege would extend.

21 THE COURT: You're not --

22 MR. BROCHIN: MERS is not a party to this action.

23 THE COURT: I've sustained it. Leave it right

24 there. You can ask your next question.

25 MR. STOPA: I have no other questions at this



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1 time for this witness.
 2 THE COURT: Okay. Shapiro's attorney first. Any
 3 questions?
 4 MR. RICHMAN: Yes, Your Honor, just very briefly.
 5 THE COURT: Okay.
 6 CROSS-EXAMINATION
 7 BY MR. RICHMAN:
 8 Q. I just want to clarify if I may, Mr. Mullis, one
 9 thing that you said is that the purpose of the
 10 assignment of the mortgage was with regard to --
 11 MR. STOPA: Leading.
 12 MR. RICHMAN: Pardon?
 13 THE COURT: It's his examination. You called the
 14 witness. Go ahead.
 15 BY MR. RICHMAN:
 16 Q. That the purpose of it was with regard to the --
 17 to record the ability to proceed forward with the
 18 foreclosure as to the note and the mortgage. Did you
 19 mean with regard to the mortgage?
 20 A. With regard to the mortgage.
 21 Q. Would that have any -- would the assignment of
 22 mortgage have any effect whatsoever with regard to the
 23 note?
 24 A. No, because the note has -- no.
 25 MR. RICHMAN: That's the only thing I wanted to

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1 clarify, Your Honor. No other questions.
 2 MS. COUTURE: I have no questions, Your Honor.
 3 THE COURT: Any redirect?
 4 MR. STOPA: No, Judge.
 5 THE COURT: Thank you. You're released. Is he
 6 released as an attorney and as a witness?
 7 MR. STOPA: Well, I don't know what they're going
 8 to say. There may be things I could use him for in
 9 rebuttal. I don't think so, but --
 10 THE COURT: So you want him outside the
 11 courtroom?
 12 MR. STOPA: Yeah.
 13 THE COURT: That's fine. Call your next witness.
 14 MR. STOPA: I think at this point I don't have
 15 any more witnesses to call, Judge.
 16 THE COURT: That's fine. Any argument? You wish
 17 to call any witnesses?
 18 MR. RICHMAN: Yes, Your Honor, we do.
 19 THE COURT: Okay. Do you have your motion at the
 20 end of the -- okay. Call your witness.
 21 MR. RICHMAN: I'd say two things. One is there's
 22 a total failure of proof with regard to any conflict
 23 of interest based on anything that he's presented.
 24 All that you got -- what we've done, Your Honor, is
 25 we have other witnesses to present -- including Ilene

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1 Cooper, including information relating to MERS --
 2 that I think will help clear the air so that there
 3 won't be any question in terms of the right to be
 4 able to do it; but initially he's not even met his
 5 burden of proof to show that there's any basis for
 6 conflict of interest or disqualification.
 7 On the face of the assignment of mortgage --
 8 first as a matter of law, the assignment of mortgage
 9 itself has nothing to do with the ability to be able
 10 to go ahead and proceed forward to foreclose with
 11 regard to the note. There has been no showing
 12 whatsoever that the note is not authentic. He did
 13 not bring his client in or anyone else to contest the
 14 signature, which I think is very, very telling
 15 because at the last hearing before Your Honor he said
 16 that was a valid dispute.
 17 He came up, he looked at the original copy
 18 of the note on here, and he has never sent it to
 19 anybody, including his client, to say, "No, that's
 20 not my signature." So the very foundation of
 21 attempting to proceed forward by taking an assignment
 22 of mortgage that has no bearing on the ability to
 23 proceed forward with regard to the foreclosure in
 24 this case using the note is basically -- I want to
 25 call it a self-created hardship, but he's attempting

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1 to raise an issue of a conflict that simply doesn't
 2 even exist. If Your Honor looks at the assignment of
 3 mortgage itself that he's relying upon in this
 4 case --
 5 MR. STOPA: I feel like I should object. Does
 6 this mean they're not presenting evidence and
 7 we're --
 8 THE COURT: I don't know. He's --
 9 MR. STOPA: I mean --
 10 THE COURT: He's just talking. What are you
 11 objecting? What's the objection?
 12 MR. STOPA: Well, I object that if he's making a
 13 closing argument then that means he's not presenting
 14 evidence. If he's -- otherwise, if he wants to
 15 present evidence --
 16 THE COURT: He says he doesn't want to go forward
 17 because you haven't proved anything in your motion.
 18 That's what he's saying --
 19 MR. STOPA: Okay.
 20 THE COURT: -- and here is why. That's the way I
 21 understand it. He's asking me to look at the
 22 assignment of mortgage because you've alleged fraud,
 23 among other things.
 24 MR. RICHMAN: That's exactly right, Your Honor.
 25 It's the equivalent of a lightly directed verdict in



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1 the sense that he hasn't even made a prima facie case
 2 here to show (a), that there's fraud; or (b), that
 3 there's any basis for disqualification in this case.
 4 The assignment of mortgage itself -- which he
 5 introduced into this case. So if you get to the very
 6 basic concept of fraud on the Court, there's got to
 7 be some type of fraud in these proceedings that is
 8 asserted somehow in these proceedings to
 9 intentionally by a -- and it's a very high standard
 10 of proof, but to be able to try to show that there
 11 was some intention to deceive or mislead this Court.
 12 This was a document that was not even filed in these
 13 proceedings, and there's a reason why it's absolutely
 14 unnecessary as a matter of law with regard to these
 15 proceedings.
 16 As long as you have the original note in
 17 there and the original of the mortgage is filed, you
 18 don't have to do anything with regard to the
 19 assignments of mortgage, which are the purpose of
 20 clearing title. And in fact what we have done -- and
 21 we'll show Your Honor the -- we've got exhibits as
 22 well on here, but we've complied fully with the
 23 administrative order of this circuit in terms of what
 24 is required to be filed to bring a mortgage
 25 foreclosure proceeding. Assignments of mortgage are

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1 not in any way required to even be filed in the case
 2 as the case proceeds. There's no such requirement of
 3 the administrative order or as a matter of law.
 4 Then you get to the question of well, he
 5 brought him in. He introduced the assignment of
 6 mortgage to try to create an issue where there really
 7 is no issue. The assignment of mortgage that he's
 8 referring to there says "MERS" -- notably it says
 9 "solely as nominee for First Security Mortgage
 10 Services, the assignor." It just says "care of
 11 Fishman." That's a mail-drop basis on there. It
 12 doesn't say that they're representing MERS in this
 13 matter for this purpose, but the fact of the matter
 14 is the members of MERS cooperate. All of the members
 15 have the right under MERS to go ahead and act as
 16 agents to sign these things --
 17 MR. STOPA: Objection. That's not in evidence.
 18 MR. RICHMAN: -- and I'm prepared to show that
 19 with regard to the documents relating to MERS. But
 20 there is -- even on the face of it, there's no prima
 21 facie case.
 22 THE COURT: Well, the complaint says MERS is the
 23 original mortgagee. I looked at the mortgage.
 24 MR. RICHMAN: Right.
 25 THE COURT: They are the original mortgagee. The

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1 holder in due course is CitiMortgage. They're here.
 2 Here is the original note, so notes requirements have
 3 been met.
 4 MR. RICHMAN: Yes, sir.
 5 THE COURT: I have to look at it in a light
 6 that's favorable to them. I'll let you present what
 7 you want to present. You want to tell me what MERS
 8 is, and I think for the record just to clear the air
 9 I want to make sure I understand clearly what MERS
 10 is. I'll let you proceed, and then I'll rule
 11 accordingly. Now what exactly is MERS?
 12 MR. BROCHIN: Sure.
 13 MR. STOPA: Well, I --
 14 THE COURT: I want to know. You want me to make
 15 a decision. I'm going to find out who MERS is.
 16 MR. STOPA: Two things. First, I'd like to argue
 17 legal argument in response to what he did before you
 18 rule.
 19 THE COURT: I denied his motion.
 20 MR. STOPA: Okay.
 21 THE COURT: He's going to present some evidence.
 22 MR. STOPA: I feel like -- is he then a witness?
 23 THE COURT: He's going to educate the Court as a
 24 friend of the Court because he's not a party here.
 25 He's an attorney for MERS, and he's going to explain

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1 to me so I understand what MERS is. It's some type
 2 of holding company. He's going to educate me. I
 3 want to make an informed decision, so --
 4 MR. STOPA: I'd like a chance to cross-examine.
 5 THE COURT: He's not a witness.
 6 MR. STOPA: Okay.
 7 THE COURT: He's going to explain to us as an
 8 attorney, as a friend of the Court what is MERS.
 9 Thank you.
 10 MR. BROCHIN: Thank you, Your Honor. MERS is the
 11 mortgagee of record. It's a membership-based
 12 organization that will serve as a mortgagee of
 13 record. So the best way to explain is with a quick
 14 example. A loan is taken out. A note is issued to
 15 repay a certain borrower -- a certain lender and MERS
 16 is listed as the mortgagee of record as the nominee
 17 for that particular lender. As the note is sold in
 18 the marketplace, which it's often done --
 19 THE COURT: They were bundled and sold.
 20 MR. BROCHIN: Sometimes they're bundled and sold,
 21 sometimes they're sold at the table as wholesale
 22 loans, sometimes they're converted in smaller
 23 bundles, but when that note is negotiated, because
 24 notes are freely negotiated, they are commercial
 25 instruments, negotiable instruments that are freely



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1 negotiated in the marketplace. As they're sold -- as
 2 long as they're sold to another member of MERS, MERS
 3 would remain as the mortgagee of record for the new
 4 purchaser of the note.
 5 So as that note is traveling through the
 6 marketplace, MERS just simply stays as the mortgagee
 7 of record, as the agent, if you will, for the lenders
 8 of the notes as they are sold in the marketplace.
 9 Now if the note is sold to somebody who is not a
 10 member of MERS, then there is a new mortgagee put on
 11 the record because they're no longer an agent of MERS
 12 and it would be an assignment by MERS to another
 13 company, but also -- and this is an instance, MERS
 14 will assign out its mortgage -- for example, when
 15 it's going to foreclose.
 16 If CitiMortgage, for example, wants to
 17 foreclose, the procedure is that MERS would assign
 18 that mortgage back to CitiMortgage so we could walk
 19 into the Court and say, "I am now the noteholder and
 20 I am the mortgagee of record." But as Mr. Richman
 21 has pointed out, and it's clearly the law in the
 22 state of Florida, it is the noteholder that confers
 23 the standing. But this allows the person, in this
 24 case CitiMortgage, to go in and say, "I'm the
 25 noteholder," which they are, "and I'm also the

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1 mortgagee of record." But it is the noteholder
 2 status that gives them the standing to foreclose.
 3 MERS is simply acting as the mortgagee of record.
 4 THE COURT: They're the holder in the
 5 clearinghouse.
 6 MR. BROCHIN: Exactly. They hold the secured
 7 interest in the property. They hold the lien --
 8 Florida being a lien state, they hold the lien on the
 9 property while that note is being negotiated through
 10 the commercial place. And they hold that note for
 11 whoever has the beneficial interest, and whoever is
 12 the holder of the note, they hold that lien for that
 13 particular party as their agent because they are all
 14 members.
 15 MERS has at this time more than 3,000
 16 members in the business. So as those notes travel to
 17 people like CitiMortgage and Freddie Mac and the
 18 like, MERS is -- they're all members of MERS. All
 19 with contractual relationships with them as
 20 operate -- as their agent or nominee as the holder of
 21 the lien. They hold the lien of record.
 22 THE COURT: Do you agree that's what MERS is?
 23 MR. STOPA: I'd like to see some evidence of it.
 24 MR. BROCHIN: Now, Counsel is well aware. He
 25 knows exactly what MERS is. And by the way, I do

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1 want to point out that on our website, the MERS
 2 website, all of this is fully explained. All the
 3 members are all listed, all 3,000 members, so if
 4 anybody wants to know who a member of MERS is, they
 5 can go onto the website.
 6 There's full documentation on the website
 7 about the membership agreements between MERS and its
 8 members. There's full documentation on the rules and
 9 procedure. Counsel is well aware of these. They're
 10 freely accessible on the website. So all these
 11 relationships that he professes ignorance on is
 12 untrue because we all know that it's very well
 13 available on the MERS website.
 14 THE COURT: Thank you.
 15 MR. STOPA: I'm not trying to profess ignorance.
 16 I just think that at hearings like this I have when
 17 you have facts in dispute, they're driven by
 18 evidence. I mean I have printouts from the MERS
 19 website right here, but I've never -- I don't know
 20 what they are. I haven't spoken to people about them
 21 and that's all I'm trying to say.
 22 THE COURT: Okay. Fine. Call your first
 23 witness.
 24 MR. RICHMAN: Your Honor, can I give a very brief
 25 opening --

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1 THE COURT: Sure.
 2 MR. RICHMAN: -- because I think this will be
 3 helpful, and Counsel's welcome to look at this as
 4 well. Perhaps I can use the easel here. What I'm
 5 going to do, Your Honor, is use witnesses in fact
 6 that will explain this. We intend to call
 7 Ilene Cooper, who's the person Your Honor has heard
 8 as the administrator with regard to the Shapiro &
 9 Fishman firm.
 10 But simply this is the flowchart, because I
 11 understand from the transcript Your Honor asked,
 12 "What is MERS," at the last hearing, so that's what
 13 we came here to basically explain and to clear the
 14 air on this. We don't believe on Counsel's part it's
 15 a legitimate issue, but we want to make sure the
 16 Court has a full understanding.
 17 This is simply the flowchart. This is the
 18 line in terms of what happens with regard to the
 19 note, because the note is the operative instrument.
 20 But what happens at the very beginning when the
 21 borrower, in this case Mr. Horner, goes ahead and
 22 enters into a mortgage and note agreement is he gets
 23 money, the note ends up going to the lender, which in
 24 this case is First Mortgage Security, Inc.
 25 But at the same time the mortgage, because



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1 of the membership agreement with MERS and the
 2 convenience that Mr. Brochin just explained, they
 3 become the nominee with regard to the mortgage for
 4 all of their members. And the -- any kind of
 5 assignment of mortgage can be done by MERS at any
 6 time as nominee with regards to its members.
 7 The important thing, Your Honor, is the
 8 agreement provides -- and we'll introduce a copy of
 9 the agreement to Your Honor -- that MERS is not the
 10 one that's even supposed to do the foreclosure. When
 11 you come to a foreclosure of the mortgage, it's the
 12 member -- the servicer for the member -- servicer as
 13 a member that does it.
 14 So what happens here is the lender has paid
 15 the money, it's got the note, but then it ends up
 16 transferring the note to an investor, in this case
 17 Fannie Mae. They end up getting paid for that --
 18 they in essence -- First Security --
 19 THE COURT: The lender gets paid back from Fannie
 20 Mae, so they get paid by that. So it's the -- Fannie
 21 Mae pays the lender --
 22 MR. RICHMAN: Exactly.
 23 THE COURT: -- for the record.
 24 MR. RICHMAN: For the record. The next thing
 25 that happens is that Fannie Mae then ends up

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1 transferring the note to a servicer. The servicer in
 2 this case is CitiMortgage, as the servicer is a MERS
 3 member. So as a MERS member, it's got the
 4 relationship with MERS as nominee. And with regard
 5 to that relationship at any time it's been assigned
 6 there, it's assigned to the member servicer at any
 7 time up to the final judgment being entered. It can
 8 even be done afterwards, because there is only one
 9 purpose and the one purpose is to make sure the chain
 10 of title is clear at such time as the foreclosure has
 11 occurred.
 12 So what happens here is there's a default
 13 that occurs after the servicer has the note. When
 14 the default happens the servicer goes back and sues
 15 the borrower on the note, and in accordance with the
 16 administrative rules of this circuit. And then on
 17 the note, they're on the note and mortgage as a
 18 member of MERS, the servicer sues as the holder of
 19 the note under Florida Statute 673 with the right to
 20 enforce the note and the mortgage under the member's
 21 name as assignee.
 22 And then at some time in here the -- it's
 23 assigned to the member servicer anytime up to final
 24 judgment to make sure the title has cleared. In this
 25 case, as we'll show to Your Honor, there were two

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1 assignments of mortgage recorded. One of them really
 2 is a nullity. It was done by mistake, but the
 3 operative one from MERS is Exhibit No. -- the correct
 4 one, the assignment of mortgage that's in evidence as
 5 Defendants' Exhibit No. 3 is the operative one.
 6 And the important thing, which I think Your
 7 Honor has already recognized, is that under the
 8 statute that only has in effect really with regard to
 9 creditors, third-party creditors that are out there,
 10 and that's what the statute contemplates. So you've
 11 got the assignment of mortgage that occurs in this
 12 place from MERS, and it says "solely as nominee for
 13 First Security Mortgage Services," because that's how
 14 we got it as nominee here that appears on the chart.
 15 And what they end up doing is they end up
 16 assigning it to their other member servicer
 17 CitiMortgage, and here they did it early on. They
 18 could have done it literally -- in terms of the
 19 foreclosure, they did it at that point in time with
 20 regard to the foreclosure. They didn't even need to
 21 do it then. It could have been done at a later
 22 period of time.
 23 And all you've got is -- in this document,
 24 the assignment of mortgage, you've got -- because
 25 Shapiro & Fishman is acting as a -- basically as a

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1 vehicle on behalf of the servicer and MERS ends up as
 2 the nominee with regard to the servicer. It's just
 3 facilitating essentially the paper transaction to get
 4 the recording done, and there's no conflict.
 5 The essence of it is there's no adversity
 6 and no conflict whatsoever, and Shapiro & Fishman may
 7 be representing somebody else or another one of these
 8 entities in another case; but again, there's no
 9 conflict, no adversity that's involved. And all of
 10 the parties in the state of Florida, when you have a
 11 law firm that's representing entities, you don't end
 12 up with adversity, Your Honor, until -- for example,
 13 let's say there's a junior lienor --
 14 THE COURT: Would that be Chase Mortgage?
 15 MR. RICHMAN: Chase. Okay. And they're
 16 representing Chase on Chase's behalf in other cases
 17 in foreclosures, but in this case Chase doesn't have
 18 a dog in the fight because it's junior and it knows
 19 it's going to get foreclosed out; and what happened
 20 in this case it allowed the default to take place.
 21 They're done. They allowed default to occur, so the
 22 bottom line in terms of rule 4-1.47 is adversity.
 23 There's no adversity in this case as a
 24 practical matter and if there is, Shapiro & Fishman
 25 gets out, because as soon as there's an issue of



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1 adversity, then of course they couldn't appear in
 2 there. But there's an understanding, as Ilene Cooper
 3 will explain, among all of these institutions that as
 4 long as there's no adversity in the individual case
 5 that it's perfectly proper for Shapiro & Fishman to
 6 go ahead and appear. There's no issue here of any
 7 impropriety, and certainly the borrower here has no
 8 basis to go ahead and raise that issue.
 9 It's not affected at all by any of this
 10 that's happening. Its only effect is to try to find
 11 a way to delay the foreclosure on the valid note,
 12 which is in the court file, from taking place, and
 13 that's why be brought in a representative of MERS.
 14 We brought in -- we will have the testimony of
 15 Ilene Cooper, who can explain what happens here, and
 16 we have a copy of the -- we actually have a written
 17 consent with regard to --
 18 MS. COUTURE: Jennifer Oakes.
 19 MR. RICHMAN: -- Jennifer Oakes from First
 20 Mortgage is here --
 21 MS. COUTURE: CitiMortgage.
 22 MR. RICHMAN: -- as well to explain that there's
 23 a written consent document, but there's no adversity.
 24 And of course under the rule, the issue concerning
 25 consent under the rule itself says it can be in

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1 writing or it can be done in open court. Prepared in
 2 open court, there's no issue. And if Counsel had
 3 done any discovery beforehand with regard to these
 4 issues before filing a motion to disqualify, we
 5 wouldn't have had to be here, I believe.
 6 THE COURT: Thank you. Call your first witness,
 7 please.
 8 MR. RICHMAN: Call Ilene Cooper, please; and
 9 we'll get an extra copy of that for the record that
 10 we can go ahead and provide for the record for the
 11 Court.
 12 THE COURT: Thank you.
 13 MR. RICHMAN: You can have this marked, Your
 14 Honor. I've got an extra copy.
 15 THE COURT: How are you, ma'am? Come on up here.
 16 Stand up and let me put you under oath and you can
 17 then be seated. What is your name please?
 18 THE WITNESS: Ilene Cooper.
 19 THE COURT: And how are you employed?
 20 THE WITNESS: I am the senior manager at Shapiro
 21 & Fishman.
 22 THE COURT: Okay. You may inquire.
 23 THEREUPON,
 24 ILENE COOPER,
 25 called as a witness on behalf of the Plaintiff, having

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1 been duly sworn or affirmed, was examined and testified
 2 as follows:
 3 DIRECT EXAMINATION
 4 BY MR. RICHMAN:
 5 Q. Ms. Cooper, when you say "senior manager," just
 6 explain what your duties generally are with regard to
 7 Shapiro & Fishman?
 8 A. I oversee the administrative operations for the
 9 firm.
 10 Q. Are you a lawyer?
 11 A. Not by -- no. By degree, yes, but I don't have a
 12 license.
 13 Q. So you're not licensed to practice?
 14 A. Correct.
 15 Q. Do you practice law?
 16 A. No.
 17 Q. And generally when you say you "oversee it," what
 18 do you do with regard to the department? Just give us a
 19 quick run through from beginning to end as to what you
 20 do with regard to mortgage forecloses?
 21 A. Sure. Well, we have staff that prepare paperwork
 22 and pleadings, and review the referrals that come to us
 23 from our clients. That staff reports to supervisors who
 24 report to managers who report to me, so --
 25 Q. And what does Shapiro & Fishman do with regard to

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1 the institutions that it represents and questions of
 2 conflict? How is that handled?
 3 A. Well, basically we have a general understanding
 4 with all of our clients that there is no conflict
 5 presumed. We know that we represent clients who make
 6 mortgages, oftentimes a junior lien to a senior lien;
 7 and it is very common practice that as a plaintiff's
 8 attorney we will be naming someone who is also one of
 9 our clients that has lent money on that same piece of
 10 property where we're not representing them on that
 11 property. Basically our understanding is that there is
 12 no conflict until such time as they file an answer into
 13 our case, at which point we would review with them and
 14 get a waiver if necessary, if they believe there is a
 15 conflict.
 16 Q. And what happens if a conflict is asserted?
 17 A. We would either get a waiver or we would transfer
 18 the case to another firm.
 19 Q. In this particular case pending before Judge
 20 Foster, has there ever been any conflict waived by JP
 21 Chase Morgan or by any of the parties?
 22 A. No, they did not file -- JPMorgan did not file an
 23 answer in the case, so we defaulted them.
 24 Q. And you represent them in other matters where
 25 they're being questioned about whether they've been



<p>53</p> <p>1 served --</p> <p>2 A. Correct.</p> <p>3 Q. -- or whether they'd know?</p> <p>4 A. Correct.</p> <p>5 Q. And in this particular case with regard to MERS,</p> <p>6 what relationship or involvement does MERS have in this</p> <p>7 case?</p> <p>8 A. They were the original mortgagee, the original</p> <p>9 beneficiary of the mortgage.</p> <p>10 Q. And do you represent MERS with regard to this</p> <p>11 case --</p> <p>12 A. No.</p> <p>13 Q. -- specifically?</p> <p>14 A. No.</p> <p>15 Q. You represent MERS in other matters?</p> <p>16 A. In the past I believe we have.</p> <p>17 Q. And has MERS in any way raised any kind of an</p> <p>18 objection or conflict with regard to the representation?</p> <p>19 A. No, not that I'm aware of.</p> <p>20 Q. Let me show you --</p> <p>21 MR. RICHMAN: If I may, madam clerk, have</p> <p>22 Defendants' Exhibit No. 3.</p> <p>23 THE CLERK: The Judge has them.</p> <p>24 THE COURT: Third document down.</p> <p>25 MR. RICHMAN: Yes, Your Honor.</p>	<p>55</p> <p>1 For many, many years we would record these</p> <p>2 and the recorders would return them to the first address</p> <p>3 that they see and we would never get the originals back,</p> <p>4 which caused a delay in being able to provide the</p> <p>5 originals back to our clients. So we just simply</p> <p>6 prepare them in care of our office so there's no other</p> <p>7 address on here other than ours and that way the</p> <p>8 original comes back to our office.</p> <p>9 Q. Well, let me direct your attention, please, to</p> <p>10 the signature that's on here with regard to that</p> <p>11 assignment of mortgage. And do you see the name -- I</p> <p>12 believe it's Jamie Hardcastle that's on here?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Can you explain how that name would be on</p> <p>15 there and how that would happen with regard to the</p> <p>16 assignment of the mortgage in this particular case?</p> <p>17 A. When we prepare an assignment of mortgage, we</p> <p>18 provide it to our client and our client takes care of</p> <p>19 the execution and then they return it to us to have it</p> <p>20 recorded.</p> <p>21 Q. So do you have anything to do with who it is on</p> <p>22 behalf of the client that's executing it?</p> <p>23 A. No, I do not.</p> <p>24 Q. And does the client make an affirmative</p> <p>25 representation to you that the person that's doing it</p>
<p>54</p> <p>1 BY MR. RICHMAN:</p> <p>2 Q. Let me show you what has been marked as</p> <p>3 Defendants' Exhibit No. 3, and can you just -- as the</p> <p>4 administrator of the office just explain to the Court</p> <p>5 what the function is of that and why it is that Shapiro</p> <p>6 & Fishman's name appears on their "care of" with regard</p> <p>7 to both the assignor and the assignee?</p> <p>8 A. Sure. When we receive a foreclosure referral</p> <p>9 from our client, they tell us who the holder of the note</p> <p>10 is, and that is who we rely on as our plaintiff in the</p> <p>11 foreclosure action. We also run a title search to see</p> <p>12 what is recorded -- what the recorded chain of title</p> <p>13 looks like. This assignment of mortgage is used solely</p> <p>14 for the purpose of clearing up the chain of title once</p> <p>15 the foreclosure sale is held.</p> <p>16 Our title insurance underwriters -- once the</p> <p>17 foreclosure is completed, our plaintiff, who takes the</p> <p>18 title to the property, they're going to want to sell</p> <p>19 that property to another entity; and the only way they</p> <p>20 can do that is if it's free and clear of any mortgages.</p> <p>21 So this assignment of mortgage basically assures them</p> <p>22 that the foreclosure action resulted in extinguishing</p> <p>23 the mortgage. But names on here, as far as our address</p> <p>24 and that it was prepared by us, is simply a logistical</p> <p>25 matter.</p>	<p>56</p> <p>1 has the authority on behalf of the client?</p> <p>2 A. We believe that they do. We have no reason not</p> <p>3 to believe that whoever signs it is not authorized to do</p> <p>4 so, so no.</p> <p>5 Q. And in that regard, with regard to MERS in</p> <p>6 specific, the assignor in this case is MERS? What</p> <p>7 knowledge do you have in terms of the procedure as to</p> <p>8 what MERS does in terms of its agents as to whether or</p> <p>9 not the agents of MERS might, for example, be the</p> <p>10 attorney working for the servicer?</p> <p>11 A. Right. MERS has its members, which CitiMortgage</p> <p>12 is a member of MERS, and there are employees who are</p> <p>13 employed by the member that have been given very</p> <p>14 specific authority to execute documents on behalf of</p> <p>15 MERS. So as far as we know in the industry it is</p> <p>16 extremely common practice to give that limited</p> <p>17 authority, and it's not questioned on our end as a</p> <p>18 result.</p> <p>19 MR. RICHMAN: Can I have just a moment, Your</p> <p>20 Honor?</p> <p>21 THE COURT: Yeah. Let me make sure I understand</p> <p>22 what you're saying. You're saying that Citibank has</p> <p>23 a person in Citibank that's authorized to sign for</p> <p>24 MERS. Is that what you're saying?</p> <p>25 THE WITNESS: Yes.</p>



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1 THE COURT: Okay. Thank you. I imagine
 2 there's -- do you know if there's some corporate
 3 document that allows --
 4 THE WITNESS: I believe that there is, yes.
 5 MR. RICHMAN: May I have this marked for
 6 identification, Your Honor, as our next numbered
 7 exhibit? As I should say our --
 8 THE COURT: Plaintiffs'.
 9 MR. RICHMAN: Plaintiffs' first exhibit. The
 10 other one was for so demonstrative purposes, so this
 11 would be the first substantive exhibit.
 12 THE COURT: Have you seen this? Do you know what
 13 it is?
 14 MR. STOPA: I don't know what they're -- no. Is
 15 this my copy?
 16 MR. RICHMAN: It's the only copy we have.
 17 THE COURT: What is it? I can get copies made if
 18 you need copies made.
 19 MR. RICHMAN: It's a corporate resolution, Your
 20 Honor, with regard to signing authority.
 21 MR. STOPA: That would help if we can. It's
 22 pretty long.
 23 THE COURT: How many do you want?
 24 MR. RICHMAN: Probably three would be helpful.
 25 THE COURT: Okay.

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1 MR. RICHMAN: And could you also get this copied
 2 as well?
 3 THE COURT: Yes. Is that to be introduced into
 4 evidence also?
 5 MR. RICHMAN: Yes, Your Honor.
 6 THE COURT: Three copies?
 7 MR. RICHMAN: Please.
 8 THE COURT: What's the other document?
 9 MS. COUTURE: It's a waiver, Your Honor, from
 10 CitiMortgage.
 11 THE COURT: Okay.
 12 MR. RICHMAN: Let me ask you also with regard
 13 to --
 14 MR. STOPA: I haven't seen a waiver either. Do
 15 you have a copy of that?
 16 THE COURT: They're going to make copies.
 17 MR. STOPA: Okay. I misunderstood.
 18 MR. RICHMAN: Can we have just a moment, Your
 19 Honor, while we're waiting for that?
 20 THE COURT: Absolutely. While we're waiting, why
 21 would you have a mortgage signed by both and a note
 22 signed by one member of the family? I've got the
 23 mortgage signed by the husband and wife and the note
 24 signed by the husband.
 25 MS. COUTURE: I can answer that, if you want to

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1 hear me? Well, Your Honor, if the property is
 2 homestead, for instance, then the husband and wife
 3 will agree that the collateral, it will be used as
 4 the note. The note is offered for money. So in
 5 exchange for that, the collateral is the home. The
 6 only person that we can actually bring an action for
 7 deficiency against is whoever signed the note. But
 8 if we have five people who are titleholders of the
 9 mortgage, then they all have to say, "Yes, we will
 10 allow that to be used as collateral." But the note
 11 itself is only going to be signed by the one person
 12 who's going to be responsible for payment.
 13 THE COURT: Thank you.
 14 MR. RICHMAN: Why don't we have this marked as
 15 well?
 16 THE CLERK: Number 2? Okay.
 17 THE COURT: Do you agree?
 18 MR. STOPA: I haven't seen them yet.
 19 THE COURT: It appears to be a corporate
 20 resolution copy. A copy of the corporate resolution.
 21 MR. STOPA: If I could have a minute to review
 22 that?
 23 THE COURT: Sure.
 24 MR. STOPA: They're seeking to introduce the
 25 corporate resolution and waiver of conflict.

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1 THE COURT: It says "waiver of conflict." Is
 2 that the second document, is the waiver. Is that
 3 what that is?
 4 MR. RICHMAN: Yes, Your Honor.
 5 THE COURT: I don't have that.
 6 THE CLERK: I'm sorry. I'm writing on it, Judge.
 7 MR. RICHMAN: If I may approach, Your Honor,
 8 here's an extra copy of both of those.
 9 MR. STOPA: I would object on the corporate
 10 resolution on lack of authentication, lack of
 11 personal knowledge, hearsay.
 12 THE COURT: Well, let's see if it can be
 13 established.
 14 MR. RICHMAN: Do you have the exhibits?
 15 THE COURT: I do.
 16 MR. RICHMAN: May I hand that to the witness,
 17 Your Honor?
 18 THE COURT: Yes.
 19 BY MR. RICHMAN:
 20 Q. Let me show you what's been identified as a
 21 corporate resolution. If you could go ahead and
 22 identify that, please?
 23 A. It is a corporate resolution, which gives certain
 24 members of CitiMortgage the authority to execute limited
 25 documents on behalf of MERS.



<p>61</p> <p>1 Q. And how do you know that to be a true and correct 2 copy?</p> <p>3 A. I've seen many of these. It's very, very common 4 in our industry.</p> <p>5 Q. And do you have copies of that kept in the normal 6 course of business --</p> <p>7 A. We do.</p> <p>8 Q. -- at Shapiro & Fishman?</p> <p>9 A. Yes, we do occasionally receive copies of these.</p> <p>10 MR. STOPA: I need to object; lack of personal 11 knowledge, lack of --</p> <p>12 THE COURT: I didn't get a chance to --</p> <p>13 MR. STOPA: Okay.</p> <p>14 THE COURT: Go ahead.</p> <p>15 BY MR. RICHMAN:</p> <p>16 Q. In this particular case is that typical of what 17 is in the records of Shapiro & Fishman?</p> <p>18 A. Yes.</p> <p>19 MR. STOPA: Leading.</p> <p>20 THE COURT: He's trying to lay the predicate. 21 I'm going to let him lay the predicate.</p> <p>22 BY MR. RICHMAN:</p> <p>23 Q. You can answer the question, please?</p> <p>24 A. Yes.</p> <p>25 Q. And there's a list on the other side of the MERS</p>	<p>63</p> <p>1 officers from CitiMortgage. Do you find on that list 2 the name of Jamie Hardcastle --</p> <p>3 A. Yes, I do.</p> <p>4 Q. -- the person who signed the mortgage of the 5 assignment of mortgage in this case?</p> <p>6 A. Yes.</p> <p>7 MR. STOPA: Hearsay, lack of personal knowledge.</p> <p>8 THE COURT: It's contained within the document. 9 He's asking her on the document, "Do you see that on 10 the document?" She says, "Yes, I do."</p> <p>11 MR. STOPA: Okay. Well, then relevance as to the 12 question of whether she sees it on the document.</p> <p>13 THE COURT: Overruled. It speaks for itself. 14 Ask your next question.</p> <p>15 MR. RICHMAN: I would like now for Your Honor to 16 have the witness identify the Exhibit No. -- is it 17 No. 2 or 3?</p> <p>18 THE COURT: 2, 3, or 4.</p> <p>19 THE CLERK: I think -- I believe it's 2. I don't 20 have them in front of me, sorry.</p> <p>21 MR. RICHMAN: Sure.</p> <p>22 THE COURT: What is 2?</p> <p>23 MR. RICHMAN: The corporate resolution would 24 be -- is Exhibit No. 1 and the waiver of conflict of 25 interest should be marked as Exhibit No. 2.</p>
<p>62</p> <p>1 certifying officers?</p> <p>2 A. Yes.</p> <p>3 Q. Without testifying to this specific document yet 4 since it's not in evidence, is that -- can you tell us 5 whether that's typical of what is done with regard to 6 the corporate resolutions?</p> <p>7 A. It is.</p> <p>8 Q. And what is the purpose of that?</p> <p>9 A. The purpose is so that MERS can approve the 10 people that are listed on the document to execute 11 documents on their behalf.</p> <p>12 MR. STOPA: Your Honor, I would move its 13 introduction at this time.</p> <p>14 THE COURT: Wish to inquire?</p> <p>15 MR. STOPA: Well, I don't think there's been any 16 predicate established at all as to this document 17 through this witness. It hasn't been authenticated. 18 She clearly has no personal knowledge of a corporate 19 resolution as between CitiMortgage, Inc., and MERS 20 when she's an employee of Shapiro & Fishman.</p> <p>21 THE COURT: I'm going to let it in right now for 22 limited purposes of this hearing.</p> <p>23 BY MR. RICHMAN:</p> <p>24 Q. And I would like to, if I may, refer you to the 25 second page where there's a reference to the certifying</p>	<p>64</p> <p>1 THE CLERK: This one is No. 1.</p> <p>2 THE COURT: The waiver of conflict of interest is 3 2.</p> <p>4 MR. STOPA: Well, he didn't move that in, Your 5 Honor.</p> <p>6 THE COURT: I'm asking --</p> <p>7 MR. RICHMAN: It's marked as No. 2, Your Honor.</p> <p>8 THE COURT: I'm merely asking my clerk if that's 9 what it is.</p> <p>10 THE CLERK: Yes, Your Honor.</p> <p>11 THE COURT: Thank you.</p> <p>12 THE CLERK: It is No. 2.</p> <p>13 THE COURT: Appreciate it.</p> <p>14 BY MR. RICHMAN:</p> <p>15 Q. I'm handing you what's been marked as Plaintiffs' 16 Exhibit No. 2. Can you identify that, please?</p> <p>17 A. It's a waiver of conflict of interest.</p> <p>18 Q. And what knowledge do you have of that document?</p> <p>19 A. Basically if a conflict arises, our client will 20 execute one stating that they're waiving any potential 21 conflict.</p> <p>22 Q. And have you received that in this case?</p> <p>23 A. I'm holding it.</p> <p>24 Q. Okay.</p> <p>25 MR. RICHMAN: And, Your Honor, I would proffer to</p>



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1 the Court we have Ms. Oakes outside as an additional
 2 witness to identify this directly. I do not have any
 3 other questions for the witness, and I would move the
 4 introduction of that Exhibit No. 2.
 5 THE COURT: Do you have any questions? Wish to
 6 inquire?
 7 MR. STOPA: I have some questions of this
 8 witness, yes.
 9 CROSS-EXAMINATION
 10 BY MR. STOPA:
 11 Q. So when a client such as CitiMortgage comes to
 12 Shapiro & Fishman with a proposed foreclosure case, they
 13 tell you that they are the holder of the note and
 14 mortgage?
 15 A. Correct. They tell us they are the holder of the
 16 note.
 17 Q. And you accept that as true?
 18 A. We do.
 19 Q. And you as a matter of general procedure presume
 20 that there is no conflict in terms of representing that
 21 client in a foreclosure case?
 22 A. Correct.
 23 Q. So you don't run any sort of conflict checks?
 24 A. We run a title search, which determines any
 25 potential interest in the property; we name those

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1 interests in our foreclosure; and if a potential -- if a
 2 party who is also one of our clients is named and files
 3 an answer, we do seek a waiver. Otherwise, there is a
 4 presumption that there is no conflict.
 5 Q. So if there are other defendants -- other banks
 6 who are defendants in a foreclosure case where you're
 7 representing the plaintiff, you presume that there is no
 8 conflict?
 9 A. That is our understanding with our clients, yes.
 10 Q. Even without speaking to that defendant bank
 11 about the specifics of that case?
 12 A. Correct.
 13 Q. You said you assume that the client that comes to
 14 you is the holder of the note because they tell you so.
 15 How do you know that's true?
 16 A. They provide us with the original note at some
 17 point so we can provide it to the court.
 18 Q. So what do you do -- well, you have many cases
 19 where they don't provide the original note, correct?
 20 A. If it cannot be located.
 21 Q. So how do you know whether you have an original
 22 note or not? How do you know that there isn't a dispute
 23 as to who may hold the note?
 24 A. I'm not sure I understand your question. If they
 25 have the note in their possession, they have the note in

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1 their possession.
 2 Q. Let's say they don't have the original note in
 3 their possession. How do you know -- when that client
 4 comes to you and says, "We want to foreclose. We're the
 5 holder of this note." How do you know that they are
 6 correct and that there's not another company that's
 7 actually the holder?
 8 MR. RICHMAN: Your Honor, my objection is
 9 irrelevance.
 10 THE COURT: Sustained.
 11 MR. STOPA: Okay.
 12 THE COURT: We're talking about this case only.
 13 I understand what you're saying, where you're trying
 14 to go.
 15 BY MR. STOPA:
 16 Q. Let's say they present the original note to you
 17 and tell you that they are the holder. How do you know
 18 that that is true and that there's not another company
 19 that is actually the holder?
 20 A. Well, if they gave it to me, they were holding
 21 it.
 22 Q. Well, how do you know it's not a document that
 23 they printed off of their computer?
 24 A. Well, it has original signatures on it.
 25 Q. So basically you take their word for it, that

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1 they're the holder --
 2 A. We rely on the documents provided to us, yes.
 3 Q. Do you have any sort of expertise in terms of
 4 viewing a document to determine whether or not that's
 5 actually an original?
 6 MR. RICHMAN: Your Honor --
 7 THE COURT: I'll cut that. Here's the
 8 presumption. It's like a counterfeit \$100 bill. You
 9 get it. You look at it. You think you have it. You
 10 present it to the bank. Then the bank says, "No,
 11 it's not real." You're presuming it -- they're
 12 presuming it is. If you want to come in and say this
 13 is a forgery or fraud, you know, go ahead and do
 14 that.
 15 There's that presumption -- we have to
 16 proceed as attorneys with clients that come in and
 17 what they tell us is true. If they -- if we have a
 18 reason to believe as an attorney that it is not true,
 19 then we don't go forward and represent them. We
 20 don't present what we know to be fraudulent evidence
 21 to a court.
 22 So I think that there's a presumption that
 23 they're saying they -- the corporate representative
 24 says, "This is my note. I'm holding it in due course
 25 and here it is." Then you presume that it is. You



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1 then, as a defense attorney or whoever, can come in
 2 and say, "This is not it, I contest the signature, I
 3 contest the time of date, the person's deceased," or
 4 all of those affirmative defenses, but I think
 5 they're proceeding for the record in good faith.
 6 There are certain things that we just have
 7 to assume are accurate. It's a document signed by an
 8 attorney. I'm going to presume these are valid
 9 documents just for the record here. In case you're
 10 going to use this transcript somewhere, which you're
 11 welcome to do, but I'm thinking that we as judges
 12 have to assume that a document is an original
 13 document until such standards would prove that it's
 14 to the contrary, which is certainly an affirmative
 15 defense that you can have.
 16 MR. STOPA: Well, I respectfully submit that when
 17 they're the plaintiff and it's their burden of proof,
 18 they have to have some evidentiary showing that
 19 that's an original note.
 20 THE COURT: They are. They're saying it's an
 21 original note.
 22 MR. STOPA: Who has said that?
 23 THE COURT: It has to be filed as as a matter of
 24 law.
 25 MR. STOPA: I understand that. There hasn't been

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1 any witnesses to this --
 2 THE COURT: I'll say again. It's a rebuttable
 3 presumption.
 4 BY MR. STOPA:
 5 Q. So if after a case is filed someone asserts
 6 there's some type of conflict, then you evaluate the
 7 nature of their conflict?
 8 A. Correct.
 9 Q. Never before that?
 10 A. I'm sure there are circumstances where we might,
 11 but it's not a common practice.
 12 Q. How about if a defendant takes the position that
 13 your client is not the owner and holder of the note? If
 14 a client such as mine takes the position that your
 15 client is not the owner and holder of the note, do you
 16 then evaluate at all who the -- whether your client is
 17 actually the owner and holder?
 18 A. Well, I think it matters that they are the holder
 19 of the note and if they've presented to me to be
 20 presented to the Court -- I mean I don't know who else
 21 would be the holder if I got it from my client and I
 22 gave it to the Court.
 23 Q. Do you dispute that Jamie Hardcastle is an
 24 employee of CitiMortgage, Inc.?
 25 A. Do I dispute that? No.

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1 Q. Do you dispute that Nate Blackstone is an
 2 employee of Citimortgage, Inc.?
 3 A. No.
 4 Q. Yet they are the individuals who signed an
 5 assignment of mortgage on October 13th, 2009, purporting
 6 to convey a mortgage from Mortgage Electronic
 7 Registration Systems, Inc., as nominee for First
 8 Security Mortgage Services to CitiMortgage?
 9 A. With authority from MERS to execute the document,
 10 yes, they did.
 11 Q. Well, you don't know that they have that
 12 authority, do you?
 13 A. Yes, I do.
 14 Q. How do you know that?
 15 A. Well, I looked at the corporate resolution.
 16 Q. And how do you know that corporate resolution is
 17 an accurate document?
 18 A. I've seen many of them. I have no reason to
 19 think it's not.
 20 Q. Have you conducted any sort of independent
 21 investigation --
 22 A. No.
 23 Q. -- in order to determine that's the case?
 24 A. No.
 25 Q. Have you made inquiry with Mortgage Electronic

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1 Registration Systems, Inc., whether that's the case?
 2 A. No.
 3 Q. So all you basically do is when you get a new
 4 client for a foreclosure case, you cause an assignment
 5 of mortgage to be prepared, send it to your client for
 6 signature, and knowing that your clients have its own
 7 employees signing it and then sending it back to you,
 8 true?
 9 A. Yes. However, that assignment is not part of the
 10 foreclosure action itself. It's a chain of title
 11 document which is not a part of the foreclosure.
 12 Q. You've never seen these assignments of mortgage
 13 be attached to a complaint?
 14 A. Sure.
 15 Q. And you don't think there's anything wrong with
 16 that?
 17 A. Not in this case, it wasn't.
 18 Q. So in cases that Shapiro & Fishman has handled in
 19 other cases --
 20 THE COURT: We're here on this case right now.
 21 MR. STOPA: The relevance will be very clear.
 22 THE COURT: Okay.
 23 BY MR. STOPA:
 24 Q. In other cases Shapiro & Fishman has, on behalf
 25 of its clients, relied on assignments of mortgage by



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1 attaching them to the complaint, correct?

2 MR. RICHMAN: Objection, Your Honor; it's just

3 irrelevant.

4 THE COURT: Sustained.

5 MR. STOPA: Can I argue the relevance?

6 THE COURT: You can tell me why.

7 MR. STOPA: As part of 4-1.7 (b) -- or 1-4.7

8 (a)(2) the issue is, is Shapiro's representation

9 materially limited by their responsibilities to

10 another client, a former client, or a third person.

11 I think the issue we have here is that these --

12 you're hearing over and over again from their side of

13 the table that these assignments of mortgage are

14 irrelevant for purposes of standing; but in many,

15 many other cases that I've had and that I've seen and

16 that have been before this Court and that she's

17 acknowledging, these assignments of mortgage are used

18 as a basis for standing.

19 So the question becomes why are they not

20 doing it in this case? Why are they not relying on

21 the assignment in this case? The reason is that they

22 only tried to distance themselves from the assignment

23 in this case after we filed the motion to disqualify.

24 After the motion to disqualify was filed was the

25 first time that Shapiro tried to say, "Well, we

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1 aren't relying on this assignment of mortgage to

2 convey standing on to CitiMortgage." Why? Because

3 their representation is materially limited.

4 The DIC case out of the Second District

5 makes it clear that an assignment of mortgage is one

6 basis in which there can be standing to sue for

7 foreclosure. Shapiro & Fishman is not willing to

8 present that argument as a basis for standing in this

9 case because of the their own interest. Because as

10 soon as the motion to disqualify got filed, they

11 didn't want to rely on the assignment when they do in

12 other cases. Why are they relying on the assignment

13 as a basis for standing in other cases? Because a

14 disqualification issue hasn't been asserted in those.

15 A conflict-free attorney would be relying

16 upon every possible basis for standing that the

17 Second District authorizes, including an assignment

18 of mortgage. So the question becomes why is Shapiro

19 & Fishman not relying upon an assignment as a basis

20 for standing in this case? Why? Because they're

21 trying to protect themselves in order to say, "Well,

22 there's nothing wrong in this transaction at all."

23 They're distancing themselves from an argument that

24 CitiMortgage would have in this case.

25 THE COURT: If you think they violated the code

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1 of conduct, you have an affirmative duty to file it.

2 If you don't do it, you are in violation yourself, so

3 go read the rules. Just like me, if I think there's

4 fraud, I have an affirmative duty to do it. If you

5 think that, then you have the duty to do it. I'm not

6 here to pass on ethics. I'm here this morning to

7 pass on are they disqualified, and right now I don't

8 see any reason to disqualify them.

9 MR. STOPA: The question --

10 THE COURT: I'm not passing on the ethical thing.

11 MR. STOPA: Well, the question is whether their

12 representation is materially limited --

13 THE COURT: I don't see it here so far.

14 MR. STOPA: Well --

15 THE COURT: I see a waiver and a corporate

16 resolution. Now if you want to go to trial at a

17 later point in time, you can present all this stuff

18 in trial. This is just a motion. I'm not going to

19 disqualify them based on what I've seen this morning.

20 MR. STOPA: Well, I'm not trying to -- all I'm

21 trying to do is talk about the relevance of this

22 document at this point --

23 THE COURT: It's coming in.

24 MR. STOPA: -- and with this witness, and, again,

25 ask -- to me the point is why is Shapiro not relying

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1 upon this assignment of mortgage as its basis to sue

2 in this case when it relies on similar assignments in

3 other cases.

4 THE COURT: I don't see where they had an

5 assignment in the pleadings.

6 MR. STOPA: I understand. They don't -- they're

7 not relying upon the assignment of mortgage in this

8 case, but they rely on assignments of mortgages as a

9 basis for standing in other cases. Why?

10 THE COURT: I don't know why.

11 MR. STOPA: I'm asking this witness. My question

12 is for the witness.

13 THE COURT: The question is, do you know why?

14 THE WITNESS: I mean --

15 THE COURT: If you know. You may not know.

16 THE WITNESS: I do know some information. What I

17 know is that there are a number of different ways to

18 confer standing, each of which is equally acceptable.

19 So one way is to be the holder of the note. There is

20 a presumption that if you have a chain of assignments

21 that is complete, that is another possible way of

22 conferring standing, but it is not the only way nor

23 is it the required way in our industry. The UCC

24 specifically states that if you're the holder of the

25 note, you have standing to be the plaintiff, and that



<p>77</p> <p>1 is what we relied upon. 2 BY MR. STOPA: 3 Q. Have you ever approached CitiMortgage, Inc., and 4 told them, "One of the ways that we can argue standing 5 for you in this case is by this assignment, but we don't 6 want to have to do that in this case?" 7 MR. RICHMAN: Your Honor, absolutely irrelevant. 8 THE COURT: Sustained. My understanding is you 9 come in and you plead it and you say there's an 10 assignment and the assignment occurs after the 11 original pleading, you can move to dismiss and they 12 can refile it, but they have to prove the assignment 13 at the final hearing. If they can show that there's 14 an assignment at the final hearing then they have 15 valid chain and they have the complaint on the note. 16 So you foreclose on the note, clear title with the 17 mortgage by having the assignment. That's the way I 18 understand it, and I've asked some people that I 19 believe that that was their area of practice and 20 expertise. That's how I understand it. If I'm 21 wrong, please tell me. 22 MR. STOPA: No, I agree with that. To me the 23 point is why is Shapiro and CitiMortgage suddenly 24 trying to give up an argument that they could be 25 asserting?</p>	<p>79</p> <p>1 this more like a trial. 2 MR. RICHMAN: It was set as an evidentiary 3 hearing. 4 THE COURT: It is. I think we need to clear the 5 air and move on -- 6 MR. RICHMAN: Yes, sir. 7 THE COURT: -- one way or the other. We need to 8 either go this way, your way, or let's treat each one 9 different. 10 MR. RICHMAN: The highway. 11 THE COURT: Well, some of you all might be flying 12 back so it might be the airway. 13 BY MR. STOPA: 14 Q. The assignment of mortgage that is dated October 15 7th, 2009, do you have that in front of you? 16 A. No. 17 THE COURT: The assignment of mortgage? 18 MR. STOPA: It's Defense 4. 19 THE COURT: Do we have that? Do you have that or 20 do I have it? 21 MR. RICHMAN: I have it, Your Honor. My fault. 22 THE COURT: That's okay. 23 THE WITNESS: Thank you. 24 THE COURT: You see that one, ma'am? 25 THE WITNESS: Yes, I do.</p>
<p>78</p> <p>1 THE COURT: Well, you don't have to plead 2 everything. They've pled it the way they pled it. 3 That's why they did what they did. The question is, 4 is this action going to stand under these pleadings. 5 MR. STOPA: But why? That's the issue under 6 4-1.7. 7 THE COURT: Your hair gets the color of mine when 8 you worry about why all the time. So if you want to 9 try it, try the case, but I'm not going to disqualify 10 them based on what I've seen at this point in time. 11 I accept the fact that the law firm has come in. 12 They said -- they told me as an officer of the court 13 that "we have a waiver, we have a corporate 14 resolution, we keep a copy of this." You want to get 15 into the questions of the waiver of conflict, it 16 looks like to me I'd like to ask a couple of 17 questions about the waiver. Is Ms. Oakes going to 18 testify? 19 MR. RICHMAN: Yes, we have her out here. 20 THE COURT: I just want to ask her a couple of 21 questions -- 22 MR. RICHMAN: Sure. 23 THE COURT: -- to satisfy myself. 24 MR. RICHMAN: Yes, sir, she's here. 25 THE COURT: This is a motion here. I'm treating</p>	<p>80</p> <p>1 BY MR. STOPA: 2 Q. This document was prepared by Shapiro & Fishman, 3 correct? 4 A. Yes. 5 Q. And this document was recorded in the official 6 records of Hillsborough County? 7 A. Correct. 8 Q. And this document conveys or purports to convey a 9 mortgage from CitiMortgage, Inc., to Federal National 10 Mortgage Association, correct? 11 A. Correct. 12 Q. On October 7th, 2009? 13 A. Correct. 14 Q. Did you ever speak with Federal National Mortgage 15 Association about it's willingness to assign this 16 mortgage to CitiMortgage? 17 A. Federal National Mortgage Association did not 18 assign its interest to CitiMortgage -- 19 Q. Did you ever -- 20 A. -- via this document. 21 Q. Well, via any document. Did you ever speak with 22 Federal National Mortgage Association -- let me start 23 that over. You agree that after this document was done, 24 Federal National Mortgage Association was the holder of 25 this mortgage?</p>



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1 A. Actually, I don't agree with that because this
 2 particular document was created in error with the
 3 incorrect parties listed, which is why you have a
 4 subsequent assignment of mortgage which is correct from
 5 Mortgage Electronic Registration Systems to
 6 CitiMortgage. Unfortunately, we had a procedural
 7 processing error where the investor and the servicer
 8 names got inserted and placed where they shouldn't have
 9 been, which is why we did the corrected assignment.
 10 Q. Would it surprise you if I told you -- well, you
 11 said "corrected assignment." Does this assignment dated
 12 October 13th say that it is a corrected assignment?
 13 A. It does not.
 14 Q. Would it surprise you that if I told you under
 15 the law once this is assigned to Federal National
 16 Mortgage Association, it is theirs? It belongs to them
 17 and not anybody else?
 18 A. Only if the assignee had the authority or the
 19 interest to assign, which in this case they did not
 20 because they had not yet received the beneficial
 21 interest themselves.
 22 Q. So as of October 7th, 2009, CitiMortgage, Inc.,
 23 did not hold the note and mortgage and hence did not
 24 have the authority to sign?
 25 A. That's not what I said. I said they were not the

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1 beneficiary of the mortgage.
 2 THE COURT: Here's what happens. If I go in the
 3 backroom and I get a quitclaim deed, and I create a
 4 quitclaim deed and I go down and record it, the clerk
 5 has a duty to record it. It may be invalid, but I
 6 record it, and you know what it shows to the world?
 7 That I have a claim or an interest in the property
 8 even though I may not legally, but I could do that.
 9 What they're saying is they did it, they
 10 made a mistake, and they're not going to go forward.
 11 They're not going to prosecute it. So I hope that
 12 it's cleared the air, but it may show some interest.
 13 Like me signing -- I could go downtown and pick up
 14 123 Bayshore, Apartment 403, and give it to me and
 15 record that quitclaim deed, and there's going to be a
 16 cloud on the title. So final judgment in fact clears
 17 that up. That's the way I understand it.
 18 BY MR. STOPA:
 19 Q. But Federal National Mortgage Association is not
 20 a party in this case, correct?
 21 A. No.
 22 Q. Do we have any indication that it has conveyed
 23 any mortgage back to someone?
 24 A. No.
 25 Q. It is simply your position that CitiMortgage,

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1 Inc., as of October 7th, 2009, did not have the
 2 authority to execute this assignment?
 3 A. They had authority to execute it. They didn't
 4 have an interest to transfer.
 5 Q. Explain what you mean by that?
 6 A. The assignment doesn't transfer anything because
 7 in order for me to transfer something from one person to
 8 another you have to have it to transfer.
 9 THE COURT: It's just a cloud. All it is -- I
 10 understand exactly what she's saying, and I got to
 11 sort it out, so --
 12 BY MR. STOPA:
 13 Q. So CitiMortgage, Inc., didn't have anything to
 14 transfer as of October 7th, 2009?
 15 A. With respect to the beneficial interest of the
 16 mortgage, that is correct. This assignment only relates
 17 to the mortgage. CitiMortgage held the note. Actually,
 18 I believe at that point we probably had the note and may
 19 have even filed it with the Court at that point.
 20 Q. Well, if it held the note, wouldn't it have had
 21 the authority to convey by this assignment?
 22 A. Well, the note travels differently than the
 23 mortgage, so not necessarily. The beneficial interest
 24 on the mortgage is completely separate from who owns the
 25 note.

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1 THE COURT: The note has value. The mortgage
 2 only shows ownership of the land; is that correct?
 3 Or a title.
 4 THE WITNESS: Correct. It shows the beneficial
 5 interest of the collateral.
 6 MR. STOPA: I think using your deed example,
 7 Judge, if there's a deed that's recorded that conveys
 8 a -- the purports to convey a property to someone,
 9 that just can't -- if the grantor has title to that
 10 property when that deed is recorded, then the grantee
 11 owns that property, whether it was a -- the deed was
 12 a mistake or not.
 13 THE COURT: I don't disagree, but if I don't have
 14 the title or interest and I deed it to myself, it's
 15 going to be a cloud and I got some claim and they got
 16 claim to clear it up. There is a big article about
 17 that I think last Sunday on NPR which was very
 18 enlightening to the Court, and I think to a lot of
 19 people, that created -- this guy in New Orleans
 20 created a lot of issues for a lot of people by going
 21 out there and recording quitclaim deeds. What's
 22 going to happen is that if you file a hearing, it may
 23 get cleared up, but right now it's in the chain, and
 24 you're right, it's there.
 25 MR. RICHMAN: And I think, as Your Honor



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1 understands, what we're talking about here is not the
 2 deed anyhow, we're really talking about the mortgage
 3 lien.
 4 THE COURT: Yeah, it's somebody claiming an
 5 interest somewhere is what it says here. Look, give
 6 me notice -- actually my understanding is it's a
 7 notice to the world is what it is and it's recorded.
 8 If it's not recorded, then it's not notice to
 9 anybody.
 10 MR. RICHMAN: Precisely.
 11 MR. STOPA: Well, once there's an assignment and
 12 it's recorded, then --
 13 THE COURT: It's a notice. It gets noticed.
 14 That's how I know it from Real Property I and II.
 15 BY MR. STOPA:
 16 Q. Now you don't dispute that Shapiro & Fishman
 17 represents Mortgage Electronic Registration Systems,
 18 Inc., currently in other lawsuits, correct?
 19 A. Correct.
 20 Q. And you don't dispute that it represents Mortgage
 21 Electronic Registration Systems, Inc., in other pending
 22 lawsuits against CitiMortgage, Inc., correct?
 23 A. I don't know if we do or don't.
 24 THE COURT: If they're an agent, how are they at
 25 each other's -- how are they at conflict if they're

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1 an agent? They're a holding company. They're like
 2 a --
 3 MR. STOPA: I've got all my case law and notes
 4 for.
 5 THE COURT: I'm just asking how. I'm thinking
 6 unless Smith Barney's holding it, how are they at
 7 conflict? They're just holding it for somebody.
 8 They're going to give it to the registered court.
 9 The Court decides. They're just a holder. I don't
 10 know how they have a conflict.
 11 MR. STOPA: Well, they're on opposite sides of
 12 the case. They're on opposite sides of these cases.
 13 THE COURT: But they're just holding it. They're
 14 saying, "Just tell me what to do with it," is the way
 15 I see it. Maybe -- am I wrong?
 16 MR. BROCHIN: No, you're not. It's an agency
 17 concept that they are the mortgagee. They have the
 18 lien on the property and they take their direction
 19 from CitiMortgage in terms of where they want that
 20 lien to go because they're acting as the -- you know
 21 what it's like? It's like the depository trust for
 22 stocks. You buy stocks, they hold that stock, and
 23 when somebody sells the stock to another owner, they
 24 just hold it for the benefit of the new owner of the
 25 stock. Same thing.

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1 THE COURT: It's as if putting the money in the
 2 registry of the court, you're just holding it. Isn't
 3 that kind of the way it is?
 4 MR. BROCHIN: Well, except here it was assigned
 5 out.
 6 THE COURT: Yeah.
 7 MR. BROCHIN: Except here it was assigned to
 8 somebody different. If it's not assigned, they're
 9 the mortgagee of record.
 10 THE COURT: I don't know if there's -- if that's
 11 a conflict. Because they are there because their
 12 name -- because they are the holder of it. I
 13 understand what you're saying.
 14 MR. BROCHIN: There's no conflict because we are
 15 their agent.
 16 THE COURT: Right. I don't see a conflict. Go
 17 ahead. And you've got the case law, but that's how I
 18 see it. They're there to say, "I've got it, Judge,
 19 tell me where to put it?"
 20 MR. STOPA: Well, I haven't heard any evidence
 21 from what MERS does at this point, so I'm kind of
 22 reserving until I see some of that.
 23 THE COURT: Go ahead.
 24 MR. STOPA: I don't have any more questions.
 25 THE COURT: I have a couple. Ma'am, do you have

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1 that waiver?
 2 THE WITNESS: Yes.
 3 THE COURT: It says before Ms. -- whoever this
 4 Whitney Wiles -- it says that Jennifer Oakes appeared
 5 in front of Ms. Wiles, and it says Missouri. How did
 6 this get dated yesterday? How did you get up and
 7 back and --
 8 THE WITNESS: The -- Jennifer Oakes is here and
 9 she brought it with her.
 10 THE COURT: In Tampa --
 11 THE WITNESS: Yes.
 12 THE COURT: -- or wherever she is.
 13 THE WITNESS: Sitting right outside the
 14 courtroom.
 15 THE COURT: Okay. So it didn't occur in
 16 Missouri, correct? She's a notary in Missouri?
 17 THE WITNESS: No, it actually was executed
 18 yesterday while she was still in Missouri and she
 19 flew here and brought it.
 20 THE COURT: "She"?
 21 THE WITNESS: Jennifer Oakes was in Missouri
 22 yesterday --
 23 THE COURT: Okay.
 24 THE WITNESS: -- and she was at work and she had
 25 this executed while she was there and she brought it



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1 with her.
 2 THE COURT: Okay. And Ms. Wiles was in Missouri
 3 also?
 4 THE WITNESS: Yes, correct.
 5 THE COURT: And you brought them both in today?
 6 THE WITNESS: Just Ms. Oakes is here.
 7 THE COURT: Okay. Thanks. Anything else?
 8 MR. RICHMAN: Nothing further, Your Honor, for
 9 this witness.
 10 THE COURT: Fine. Thank you. Are you going to
 11 call any other witnesses?
 12 MR. RICHMAN: Yes, Jennifer Oakes, Your Honor.
 13 THE COURT: Thank you.
 14 MR. STOPA: I could use a restroom break, Judge.
 15 THE COURT: Sure. How long do you all want?
 16 MR. STOPA: Five minutes.
 17 THE COURT: Let's take ten minutes. See you all
 18 in ten minutes.
 19 (Recess 11:08 a.m. to 11:23 a.m.)
 20 MR. RICHMAN: Yes, sir, we'll call Jennifer Oakes
 21 at this time.
 22 THE COURT: Thank you. Hi, ma'am, how are you?
 23 Come on up here and have a seat, please. Have a
 24 seat, please. What's your name and occupation?
 25 THE WITNESS: Jennifer Oakes. I'm a legal

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1 support specialist for CitiMortgage.
 2 THEREUPON,
 3 JENNIFER OAKES,
 4 called as a witness on behalf of the Plaintiff, having
 5 been duly sworn or affirmed, was examined and testified
 6 as follows:
 7 DIRECT EXAMINATION
 8 BY MR. RICHMAN:
 9 Q. And where do you reside?
 10 A. In O'Fallon, Missouri.
 11 Q. And tell us what your duties are with regards to
 12 CitiMortgage?
 13 A. I support our litigation team in handling
 14 litigation files in our foreclose cases.
 15 Q. And in that regard if you would take a look at
 16 what we've had marked as Plaintiffs' Exhibit No. 2, can
 17 you tell the Court if you recognize that?
 18 A. Yes.
 19 Q. And is that your signature that appears there?
 20 A. Yes.
 21 Q. And when was that executed?
 22 A. Yesterday, June 17th.
 23 Q. And were you in Missouri at the time?
 24 A. Yes.
 25 Q. And would you tell the Court the purpose of your

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1 having that executed?
 2 A. To waive any conflict with MERS in this case.
 3 Q. And as a practical matter, what is the policy as
 4 you understand it with regard to CitiMortgage
 5 Corporation and MERS in general without any of the
 6 specifics of the waiver?
 7 A. CitiMortgage is a member of MERS and they exist
 8 so that they can -- so we don't have to assign the
 9 mortgage, everything. They hold the assignments. They
 10 track it.
 11 MR. RICHMAN: I have no other questions, Your
 12 Honor.
 13 THE COURT: Any questions?
 14 MR. STOPA: Yes, Judge.
 15 THE COURT: Thank you.
 16 CROSS-EXAMINATION
 17 BY MR. STOPA:
 18 Q. When's the first time that an issue of waiver of
 19 conflict was discussed with you?
 20 A. That would be yesterday.
 21 Q. Had you ever previously signed any sort of waiver
 22 of conflict?
 23 A. No.
 24 Q. So prior to the filing of this case in October
 25 2009, you haven't signed any sort of waiver?

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1 A. No.
 2 Q. To your knowledge had anyone else at
 3 CitiMortgage, Inc.?
 4 A. I don't know.
 5 Q. To your knowledge had anyone at CitiMortgage,
 6 Inc., discussed the issue of conflict at any time prior
 7 to yesterday?
 8 A. I don't know.
 9 Q. Would that be something that you would typically
 10 do or that someone else would do?
 11 A. I'm not sure if anyone else would do it. I would
 12 have authority to sign the waiver of conflict.
 13 Q. Prior to -- well, let me start that over. Are
 14 you aware that Shapiro & Fishman is taking the position
 15 that CitiMortgage's standing to sue in this case is not
 16 based on an assignment of mortgage?
 17 A. I believe it's based on the fact that we're the
 18 holder of the note.
 19 Q. Okay. Are you aware that Shapiro & Fishman is
 20 taking the position in this case that CitiMortgage's
 21 standing is not based on an assignment of mortgage?
 22 A. Yes.
 23 Q. Did anyone at Shapiro & Fishman discuss with you
 24 its decision -- any sort of decision not to argue that
 25 standing was not predicated on an assignment of



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1 mortgage?

2 MR. RICHMAN: Objection.

3 MS. COUTURE: Objection.

4 THE COURT: Okay. What's your objection?

5 MS. COUTURE: Attorney-client privilege, Your

6 Honor.

7 THE COURT: Ma'am, you have a right to claim

8 privilege. It's a right that's unique to you. The

9 attorneys have stood up and said that is a right. If

10 you wish to claim it, you may claim it. I'm assuming

11 you're doing it for the corporation and for her?

12 MS. COUTURE: Well, I'm representing CitiMortgage

13 and I'm doing it on behalf of CitiMortgage.

14 MR. RICHMAN: And I'm doing it on behalf of the

15 law firm, Your Honor.

16 THE WITNESS: Yes, I'll take attorney-client

17 privilege.

18 THE COURT: Thank you.

19 MR. STOPA: Judge, they are presenting a waiver

20 of conflict. The issue under 4-1.7 --

21 THE COURT: You asked had they ever discussed it.

22 You want to ask your next question? Ask your next

23 question.

24 BY MR. STOPA:

25 Q. Do you consent to Shapiro & Fishman waiving the

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1 argument that CitiMortgage has standing based on an

2 assignment of mortgage?

3 MR. RICHMAN: Objection.

4 MS. COUTURE: Objection.

5 THE COURT: It's a legal question. She's not

6 qualified to answer. You may ask about who she is,

7 where she is, where she works, and did she sign the

8 document.

9 MR. STOPA: Well, I need to understand --

10 THE COURT: Then you can take depositions if you

11 want to take depositions, but this is not a fact,

12 this is --

13 MR. STOPA: Well, it's an evidentiary hearing.

14 THE COURT: I understand that. Ask your next

15 question.

16 BY MR. STOPA:

17 Q. What is it that you think you're waiving by

18 virtue of signing this document?

19 A. The conflict of interest or any possibility of

20 conflict of interest.

21 Q. Between who?

22 A. CitiMortgage and MERS.

23 Q. Anyone else?

24 A. Not that I'm aware of.

25 Q. Do you know whether there's a conflict of

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1 interest between -- strike that. Do you know whether

2 Shapiro & Fishman, LLP, represents JPMorgan Chase Bank?

3 A. I wouldn't know that.

4 Q. So you haven't waived any sort of conflict of

5 interest that may exist with respect to Shapiro's

6 representation of JPMorgan Chase Bank?

7 A. No.

8 Q. How about First Security Mortgage Service, Inc.?

9 Have you waived any sort of conflict that may exist with

10 respect to it?

11 A. No.

12 Q. How about Federal National Mortgage Association?

13 Have you waived any sort of conflict that may exist with

14 respect to it?

15 A. No.

16 Q. Do you know whether any sort of conflict exists

17 with respect to JPMorgan Chase Bank?

18 MS. COUTURE: I'm going to object, Your Honor. I

19 believe that calls for legal conclusion as well.

20 THE COURT: The question is does she know.

21 MS. COUTURE: Okay.

22 THE COURT: Do you know?

23 THE WITNESS: No.

24 BY MR. STOPA:

25 Q. Did you know that JPMorgan Chase Bank has been

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1 named as a defendant in this case?

2 A. I was not aware of all the details of the case.

3 I believe so.

4 Q. But you haven't waived any sort of conflict that

5 may exist with respect to it?

6 A. No.

7 Q. What is your role at CitiMortgage, Inc.?

8 A. I'm a legal support specialist. We assist the

9 attorneys in our legal department handling litigation

10 files.

11 Q. What do you do on a daily basis?

12 A. We gather documents for the attorneys that they

13 need, we have calls with our legal department and the

14 attorneys and discuss the best way to handle the files,

15 we speak as the client in the matter of CitiMortgage,

16 and help decide the best route to take with our

17 litigation cases.

18 Q. Did you obtain the consent of Mortgage Electronic

19 Registration Systems, Inc., to file this lawsuit?

20 A. I did not obtain any consent.

21 Q. To your knowledge did anyone at CitiMortgage,

22 Inc., obtain such consent?

23 A. I do not know.

24 Q. To your knowledge did CitiMortgage, Inc., obtain

25 the consent of Federal National Mortgage Association?



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1 A. I don't know.
 2 Q. Did you?
 3 A. No, I didn't.
 4 Q. To your knowledge did CitiMortgage, Inc., obtain
 5 the consent of First Security Mortgage Services, Inc.?
 6 A. I don't know.
 7 Q. CitiMortgage, Inc., is a shareholder of Mortgage
 8 Electronic Registration Systems, Inc., correct?
 9 A. They are a member.
 10 MR. STOPA: May I approach?
 11 THE COURT: Yes.
 12 BY MR. STOPA:
 13 Q. I'm showing you a printout from the MERS
 14 website --
 15 THE COURT: Have you seen this?
 16 MR. RICHMAN: I have not, Your Honor, unless it
 17 was included in the original file.
 18 THE COURT: Do you have a copy for them?
 19 MR. STOPA: Yes.
 20 THE COURT: Thank you.
 21 BY MR. STOPA:
 22 Q. Do you see where it lists CitiMortgage, Inc., as
 23 a shareholder of MERS?
 24 A. Yes.
 25 Q. Does that refresh your recollection as to whether

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1 CitiMortgage, Inc., is a shareholder of MERS?
 2 A. I'm not aware of whether they are or whether
 3 they're not.
 4 Q. Who is Jamie Hardcastle?
 5 A. She works at CitiMortgage in the -- well, I'm not
 6 quite sure which department she works in.
 7 Q. Do you know her?
 8 A. Yes.
 9 Q. Do you work with her?
 10 A. No, she works in my building.
 11 Q. She's an employee of CitiMortgage, Inc.?
 12 A. Yes.
 13 Q. How about Nate Blackstone? Do you know him?
 14 A. Yes.
 15 Q. Who is he?
 16 A. He's vice president of CitiMortgage.
 17 Q. Does he work in your building as well?
 18 A. Yes.
 19 Q. And when you say "your building," you're
 20 referring to a building where?
 21 A. In O'Fallon, Missouri.
 22 Q. I'm sorry. Where?
 23 A. O'Fallon, Missouri.
 24 Q. Can you spell the name of the city?
 25 A. O- apostrophe F-a-l-l-o-n.

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1 Q. Okay. Thank you. Do you know whether
 2 Mr. Blackstone obtained the consent of MERS prior to
 3 signing an assignment of mortgage in this case?
 4 A. He's an authorized signer for MERS.
 5 Q. Even though he's also the vice president of
 6 CitiMortgage?
 7 A. Yes.
 8 Q. You see any sort of problem with that?
 9 A. No.
 10 Q. How did CitiMortgage become the -- or how do you
 11 allege that CitiMortgage became the owner and holder of
 12 this note in this case?
 13 A. It was assigned to CitiMortgage --
 14 Q. From whom?
 15 A. -- from MERS.
 16 Q. From whom?
 17 A. MERS.
 18 Q. On behalf of whom?
 19 A. I'm not sure.
 20 Q. How about the note? MERS doesn't hold the notes,
 21 correct?
 22 A. Correct.
 23 Q. So how did -- or from whom did CitiMortgage
 24 allegedly come into possession of the note?
 25 MR. RICHMAN: Your Honor, objection; irrelevant

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1 to this hearing with regard to the motion.
 2 THE COURT: Read the question back. I'm sorry.
 3 I was reading a paragraph there.
 4 (The preceding question was read back by the
 5 court reporter.)
 6 THE COURT: Why is that relevant?
 7 MR. STOPA: Well, they've repeatedly argued
 8 without any sort of evidentiary basis that the
 9 original note is in the file; and I'm trying to
 10 understand --
 11 THE COURT: It is in the file.
 12 MR. STOPA: Well --
 13 THE COURT: They've argued that. It is in the
 14 file. I have it. I don't know how it got filed, but
 15 it's filed. I guess it came with a cover letter,
 16 which is not part of the record. There is a note in
 17 here, original note, so sustained.
 18 BY MR. STOPA:
 19 Q. Who was the holder of the note prior --
 20 THE COURT: Excuse me. Here is a notice of
 21 filing by Jessica Contune. So she's filed the
 22 original note and a certified copy of the original
 23 mortgage on the 19th of January, 2010.
 24 MR. STOPA: Judge, I'm simply noting that hasn't
 25 been authenticated, that's all.



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1 THE COURT: What hasn't been authenticated?
 2 MR. STOPA: The note.
 3 THE COURT: If you've got reason to think it's
 4 not real, help yourself.
 5 MR. STOPA: Not for today.
 6 BY MR. STOPA:
 7 Q. From which company did CitiMortgage obtain the
 8 note?
 9 A. I'm not sure.
 10 Q. When did that happen?
 11 MR. RICHMAN: Same objection.
 12 THE COURT: If she doesn't know, she doesn't
 13 know. Let's see if she knows. The question is, do
 14 you know?
 15 THE WITNESS: I'm not sure.
 16 THE COURT: Okay. Ask your next question.
 17 BY MR. STOPA:
 18 Q. Who in your company would know those questions?
 19 A. I would be able to tell you the answer if I had
 20 the system up in front of me. Someone from our records
 21 department could actually produce this. There are a
 22 number of people that would be able to look at it and
 23 tell you.
 24 MR. STOPA: No more questions for this witness.
 25 THE COURT: Thank you. Is she free to leave?

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1 MR. RICHMAN: May I briefly, Your Honor?
 2 THE COURT: Sure. I'm sorry.
 3 REDIRECT EXAMINATION
 4 BY MR. RICHMAN:
 5 Q. Ms. Oakes, with regard to the question you were
 6 asked about written waivers and you don't normally do
 7 written waivers as was done in this case, why don't you
 8 normally do written waivers?
 9 A. I've never had to do a waiver. I've never had it
 10 come up as a conflict of interest, especially with MERS.
 11 Q. Why is that, that it doesn't come up as a
 12 conflict of interest?
 13 A. Because we work with MERS on several loans and
 14 I -- we are a member of MERS. We are authorized to --
 15 there are people in our company that are authorized to
 16 sign for MERS. There's generally no conflict.
 17 Q. And if you have JPMorgan Chase, for example, as a
 18 second lienor that isn't in any way contesting the
 19 mortgage foreclosure in this case, would CitiMortgage
 20 view that as in any way being a conflict to have Shapiro
 21 & Fishman represent you in that regard?
 22 MR. STOPA: Objection; legal conclusion. The
 23 same objection you sustained on me.
 24 THE COURT: Ask it again. Rephrase it.
 25 BY MR. RICHMAN:

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1 Q. If you have a situation where JPMorgan Chase is
 2 in a second lien position and is defaulted in this case
 3 and is not contesting CitiMortgage's right to foreclose,
 4 would you view it as being anything that you'd need to
 5 get a conflict of waiver for?
 6 MR. STOPA: Same objection.
 7 THE COURT: I don't know if she's qualified to
 8 answer that question.
 9 MR. RICHMAN: I'll withdraw it then, Your Honor.
 10 BY MR. RICHMAN:
 11 Q. Let me ask this question then. Is the -- the
 12 question was asked -- and I don't think this is
 13 necessary, but I'm going to follow up quickly and ask if
 14 this document of which I only have one copy to answer
 15 the question with regard to the transfer of the note
 16 that was asked on cross-examination. I would ask the
 17 witness to identify this document that shows the
 18 transfer, and it was sent to Mr. Horner.
 19 THE COURT: Where is that document?
 20 MR. RICHMAN: It's in his hand right now, Your
 21 Honor.
 22 MR. STOPA: It's very long, and I'm seeing it for
 23 the very first time in very small print.
 24 MR. RICHMAN: The position, Your Honor, we take
 25 is that it's totally irrelevant in terms of the

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1 transfer. He did ask it in cross-examination, and I
 2 have to document here that will serve to refresh the
 3 witness's recollection with regard to how the note
 4 got to CitiMortgage?
 5 THE COURT: I'll wait for him to look at it and
 6 see if it refreshes your recollection.
 7 MR. STOPA: I don't see how that could be, but I
 8 would like to get a copy of that as well.
 9 THE COURT: We can provide that to you.
 10 MR. STOPA: Thank you.
 11 THE COURT: Ma'am, take a look at it. It will be
 12 marked as 3, right?
 13 MR. RICHMAN: That would be Plaintiffs' 3.
 14 THE CLERK: Yes, Plaintiffs' 3.
 15 BY MR. RICHMAN:
 16 Q. Let me hand you what has been marked as
 17 Plaintiffs' Exhibit 3, and ask you to identify that.
 18 A. This is the welcome letter.
 19 Q. Explain what a welcome letter is?
 20 A. It's, you know, to inform the borrower that the
 21 loan has transferred servicing, and it's transferred
 22 from ABN AMRO to CitiMortgage.
 23 Q. And is that a document that you brought with you?
 24 A. Yes.
 25 Q. So you have personal knowledge of that, that



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1 that's in the file and it came from the files of
 2 CitiMortgage?
 3 A. Yes, that's where I got it from.
 4 Q. And what's the date on that with regard to when
 5 the note and the file were transferred to CitiMortgage
 6 as the servicer?
 7 MR. STOPA: Authentication, lack of personal
 8 knowledge. She hasn't testified she's seen the
 9 document or can authenticate it in any way.
 10 BY MR. RICHMAN:
 11 Q. Where'd you get the document?
 12 A. From our imaging system. I brought this with me
 13 today.
 14 Q. And is that kept in the normal course of business
 15 by Citicorp --
 16 A. Yes.
 17 Q. -- as a business record?
 18 A. Yes.
 19 Q. And you personally brought that here and got it
 20 off of your own -- the system at Citicorp and -- well,
 21 wherever it is, but you were in Missouri at the time you
 22 did it?
 23 A. Yes.
 24 MR. RICHMAN: I would move its introduction, Your
 25 Honor?

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1 MR. STOPA: I'd like to see the document again.
 2 I didn't realize they were trying to introduce it.
 3 It's two pages with small font. I'd like another
 4 chance to read it.
 5 THE COURT: What do you call it?
 6 THE WITNESS: The welcome letter.
 7 THE COURT: Is that what you sent to the person
 8 that borrows the money?
 9 THE WITNESS: Yeah, it was sent to the borrower
 10 to let them know that servicing was transferred.
 11 THE COURT: From whom to whom?
 12 THE WITNESS: From ABN AMRO to CitiMortgage.
 13 THE COURT: You can look at it. I'm going to let
 14 it in. I got one when I just bought my house.
 15 MR. STOPA: What is it relevant to? What is it
 16 evidence of?
 17 THE COURT: You asked how they get changed, was
 18 the question.
 19 MR. STOPA: Well, there's nothing about that
 20 document that shows that a note was transferred.
 21 THE COURT: It's coming in. It is, and that's
 22 the same thing that I got. You go to the bank. You
 23 borrow the money. I borrowed the money from -- I
 24 actually went through my local bank, they got another
 25 bank to do it, and then the next thing I know Wells

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1 Fargo is managing my money, and that's what she
 2 said -- to me it was a surprise letter, but that's --
 3 MR. RICHMAN: As opposed to a welcome letter.
 4 THE COURT: Well, yeah, because I knew Citibank
 5 and I don't like Wells Fargo, but it's what they do.
 6 That's what I got.
 7 THE COURT: Anything else?
 8 MR. RICHMAN: Nothing further, Your Honor.
 9 THE COURT: You can have a copy because you can
 10 later on ask any question you want, but not right
 11 now. I know what it is. It's relevant material and
 12 it shows continuity. Anything else?
 13 MR. RICHMAN: Nothing from me, Your Honor.
 14 THE COURT: Thank you. Is she released?
 15 MR. RICHMAN: Yes.
 16 MR. STOPA: I have a couple of cross questions on
 17 that document.
 18 THE COURT: Okay. Go ahead. You want to see the
 19 document?
 20 MR. STOPA: Yes, if I could see the document so I
 21 can ask her some questions about it.
 22 RECROSS-EXAMINATION
 23 BY MR. STOPA:
 24 Q. Is ABN AMRO Mortgage Group, Inc., a member of
 25 MERS?

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1 A. I don't know.
 2 THE COURT: There's 3,000 members? Do you want
 3 me to look it up? Can I look -- do you want me to
 4 look it up? I'd be more than happy to look it up if
 5 you want to know.
 6 MR. STOPA: I don't know what we could -- I mean
 7 I'm curious to know what that may say, but I don't
 8 see how it's admissible for evidentiary purposes.
 9 THE COURT: You just asked the question. I just
 10 said --
 11 MR. STOPA: I understand.
 12 THE COURT: -- "If you want me to, I'll look it
 13 up on the Internet."
 14 MR. STOPA: Sure. I'm curious to know, but I
 15 don't think it's admissible for evidentiary purposes.
 16 BY MR. STOPA:
 17 Q. Was there ever an assignment of mortgage from ABN
 18 AMRO Mortgage Group, Inc., to CitiMortgage?
 19 A. I don't know.
 20 Q. But there was from Mortgage Electronic
 21 Registration Systems, Inc., as nominee of the original
 22 mortgage holder, correct?
 23 A. Right.
 24 THE COURT: What's the name of the company that
 25 you want me to look up?



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1 MR. BROCHIN: The website address is mersinc.org,
 2 m-e-r-s.
 3 THE COURT: And what's the company you want me to
 4 look at?
 5 MR. BROCHIN: ABN AMRO.
 6 MR. STOPA: It will be easier if I showed you,
 7 Judge. ABN AMRO Mortgage Group.
 8 THE COURT: Have you looked it up?
 9 MR. BROCHIN: I have tried, yes. I believe
 10 they're a member.
 11 MR. RICHMAN: The relevant date, Your Honor,
 12 would be '07 anyhow. What is it? ABN?
 13 THE COURT: ABN -- it's all caps. ABN capital
 14 A-M --
 15 MR. BROCHIN: They're not showing as --
 16 THE COURT: Was --
 17 MR. BROCHIN: I looked up ABN and ABN AMRO and
 18 neither show a match. But as Mr. Richman points out,
 19 this is current member lists, not necessarily who may
 20 have been a member back then. I don't know their
 21 financial status.
 22 THE COURT: AMRO, A-M-R-O?
 23 MR. STOPA: Yes, Judge.
 24 THE COURT: You want mortgage, bank, net banking,
 25 mortgage customer, customer service?

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1 MR. STOPA: ABN AMRO Mortgage Group, Inc.?
 2 MR. RICHMAN: As noted, Your Honor, that was
 3 2007.
 4 THE COURT: This is March 26th. "The holding
 5 company was subsidiaried to perform commercial
 6 banking operations, investment banking, and other
 7 related financial activities -- the Netherlands, and
 8 they sell them in Malaysia." That's what it says
 9 here. "AMRO Mortgage Group, Inc., profiled by" --
 10 let's see -- "was purchased in 2007 by Citigroup, one
 11 of the largest loan originators in loan servicing in
 12 the United States."
 13 MR. RICHMAN: I think we just found the answer,
 14 Your Honor.
 15 THE COURT: Well, I'm reading off the Internet.
 16 I put in -- Googled AMRO -- ABN AMRO, and I'm reading
 17 to you its overview. Its records says if you want,
 18 it says
 19 "cittowninfo.com/lenders/abn-amro-mortgage-group-inc
 20 ," and that's what it says.
 21 MR. RICHMAN: Your Honor, if it indicates that it
 22 was purchased by Citigroup that would be a good
 23 reason for it no longer to be listed as a separate
 24 member in 2010 as a member of MERS.
 25 THE COURT: That could be. Whatever that

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1 particular interest group because it indicates "still
 2 doing business in other parts of the world." I would
 3 imagine there's -- it shows Anniston, Alabama;
 4 Birmingham; Arizona -- what state do you want? What
 5 state do you want?
 6 MR. STOPA: I'm not sure. If you're asking me,
 7 I'm not sure what you're asking?
 8 THE COURT: Where is that letter from? It was
 9 done here in Florida, right?
 10 MR. STOPA: The letter indicates Gaithersburg,
 11 Maryland, on it.
 12 THE COURT: Maryland; Sykesville, Maryland,
 13 S-y-k-e-s-v-i-l-l-e, Maryland. 7566 Main Street,
 14 Sykesville, S-y-k-e-s-v-i-l-l-e, Maryland 21784.
 15 MR. RICHMAN: That letter, Your Honor, is from
 16 Citi, that's not from the other company.
 17 THE COURT: All right.
 18 MR. RICHMAN: The one he has in his hands, so
 19 that wouldn't answer that question.
 20 THE COURT: It seems like it's pretty big
 21 information. Here you can get it on
 22 cititowninfo.com, if you want it.
 23 MR. STOPA: Well, sounds like we have some
 24 discovery to do about those issues, but I think
 25 that's all I have then for this witness.

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1 THE COURT: Thank you. Anything else?
 2 MR. RICHMAN: Nothing further.
 3 THE COURT: Thank you, ma'am. Okay. Now, any
 4 additional witnesses?
 5 MR. RICHMAN: None, Your Honor.
 6 THE COURT: I've read your motion. You've asked
 7 me to -- paragraph 16, have an evidentiary hearing,
 8 which I've done. I've heard all the testimony. I'm
 9 trying to figure out how Shapiro's going to be a
 10 witness. I don't see them as a witness in here.
 11 MR. RICHMAN: They are not, Your Honor.
 12 THE COURT: I don't see -- that's what he's
 13 saying. There will be a central figure at trial. I
 14 just don't see how they're a witness. They'll
 15 present evidence and they may call people as a
 16 witness.
 17 MR. STOPA: Are you asking me to begin my
 18 closing, Judge?
 19 THE COURT: I want to know how you think they're
 20 going to be a witness?
 21 MR. STOPA: To the extent that CitiMortgage,
 22 Inc., is relying on -- well, first I note that the
 23 witness issue is one of the smaller issues with
 24 respect to the disqualification motion. The main
 25 issues are other things. But to answer your



<p style="text-align: center;">113</p> <p>1 question, to the extent that CitiMortgage, Inc., is 2 attempting to rely on assignments as its basis for 3 standing. Which, if they're saying they're not, as I 4 see Counsel saying, then let's have a stipulation, a 5 court order that says that That says -- let's have 6 an order that says that they are not relying on any 7 sort of assignment of mortgage as a basis for 8 standing in the case. If that -- if an order gets 9 entered in that regard, then I have much less of an 10 issue with respect to Shapiro being a witness. 11 When I filed this motion, I didn't know what 12 kind of response Shapiro was going to give. It was 13 only after the motion was filed that they took the 14 position that their standing is not based on the 15 assignment. If that's their position, then let's 16 have an order be entered that clarifies their 17 standing is not based on the assignment. 18 What I don't want to have happen is I don't 19 want to proceed further in the case after 20 disqualification is denied predicated on arguments 21 that they aren't relying upon the assignments, and 22 then later have them try to rely on the assignments. 23 Because if they rely on the assignments, I think it 24 becomes clear that, you know, it's all a mess. 25 Brandon Mullis, the person whose name was on</p>	<p style="text-align: center;">115</p> <p>1 purposes of the case, because the propriety of the 2 assignments -- the fact that they're prepared by 3 counsel, sent to their own clients, are not signed by 4 someone independent. 5 They're signed by someone from CitiMortgage. 6 It's conveying something to itself, and they 7 testified it's their routine business practice to 8 convey these documents to themselves. They have 9 their own -- the vice president of CitiMortgage signs 10 that assignment alerting the world by putting it in 11 public record that they have the mortgage when he's 12 signing it over to himself. 13 THE COURT: I understand what you're saying, but 14 if you go to trial, they may bring in these corporate 15 officers to do that at great expense, which may be a 16 taxable cost -- 17 MR. STOPA: Well -- 18 THE COURT: -- but I'm not going to disqualify 19 them based on what I've seen at this hearing. Now at 20 trial, if it comes up, you can always raise that 21 issue, but all I'm saying is based on what I've seen 22 here and what I've heard, I'm not going to do that at 23 this point in time. You can take all the depositions 24 that you're entitled to, and you should. 25 MR. STOPA: I understand that disqualification is</p>
<p style="text-align: center;">114</p> <p>1 it, didn't know very much about them. They -- the 2 person they presented from CitiMortgage didn't know 3 much about it. The people from the witnesses who 4 signed from CitiMortgage are out of state, so they're 5 outside of my subpoena power for trial purposes, 6 so -- 7 THE COURT: I don't know about that. 8 MR. STOPA: I think that -- 9 THE COURT: They're doing business in the state 10 of Florida, they've got agents here, you can do all 11 of that. 12 MR. STOPA: Well, not the specific individuals 13 who reside there. 14 THE COURT: You know what? If they can't prove 15 the trial, they don't win. 16 MR. STOPA: Well, I think that the witness issue 17 will be clarified if we have an order that says that 18 their standing is not based on any sort of 19 assignment. 20 THE COURT: You know, they can bring the people 21 in, but I don't think that Shapiro is a witness. 22 MR. STOPA: As soon as they start relying on 23 those assignments, the issue you have -- and this is 24 just on the witness issue. But the issue that they 25 have is that Shapiro becomes a central figure for</p>	<p style="text-align: center;">116</p> <p>1 disfavored and that it's easy to look at this and 2 say, "Where is the adversity, there's conflict," like 3 they're trying to say. I would ask to be given an 4 opportunity to go through the stack of cases and the 5 legal arguments and such that I have that -- to 6 convince the Court otherwise. I haven't had a chance 7 to do that yet. 8 THE COURT: You can do whatever you want. I'm 9 telling you I don't see a conflict. I don't see a 10 real or perceived conflict at this point in time. 11 MR. STOPA: Okay. 12 THE COURT: That's what you need to -- at this 13 point in time, I don't see it. I can see how they 14 can bring in these witnesses here and say, "My name 15 is John Doe. I did this. I come from" -- they can 16 bring in the chairman of the board of Citibank and 17 sit down here and say, "You know, here's our 18 corporate resolution. We've talked about this back 19 in 2000 when we created MERS" -- or whenever MERS was 20 created. "Here's our original corporate documents. 21 We do this, we saw this, and we give authorization to 22 these people. We got somebody out in Missouri. 23 We'll bring the Missouri person in." The Missouri 24 person will say, "This is what I do, and I assigned 25 it to the -- Ms. Oakes, who came in and testified</p>



<p style="text-align: center;">117</p> <p>1 here in this" -- and she has the authority, real and 2 apparent, and they're merely a conduit. I just don't 3 see where -- 4 MR. STOPA: Can I present the cases, Judge? 5 THE COURT: Sure. 6 MR. STOPA: I'd start with the body of rule, 7 4-1.7 -- 8 THE COURT: I read that. I've litigated it when 9 I was a young lawyer. 10 MR. STOPA: -- (a)(1) representation of -- 11 THE COURT: Just proffer that it's there. I'm 12 aware of it. 13 MR. STOPA: They're directly adverse as a matter 14 of law when they're on opposite sides of the 15 transaction. The undisputed evidence before this 16 Court today was that Shapiro represents CitiMortgage, 17 Inc., JPMorgan Chase Bank, and Mortgage Electronic 18 Registration Systems, Inc. They're on opposite sides 19 of the V. They're directly adverse as a matter of 20 law under (a)(1). Under (a)(2) substantial risks 21 that the representation is materially limited by the 22 lawyers' responsibilities. 23 I have never seen a case -- I have a lot of 24 these cases and have never seen in a case where a law 25 firm comes in and says, "We're not relying upon an</p>	<p style="text-align: center;">119</p> <p>1 representation on the record. 2 THE COURT: They defaulted. 3 MR. STOPA: There is -- 4 THE COURT: They don't have a claim. They have 5 been defaulted. They didn't file an answer. Their 6 first answer could have been conflict of interest. 7 They have defaulted. And maybe I'm missing it 8 totally, and I sure hope I'm not because if I have, 9 somebody's going to tell me, boy, I got it wrong. 10 And if I got it wrong, I got it wrong, but they don't 11 have -- they can't even raise a claim. 12 MR. STOPA: Before the default was entered -- 13 when you're suing -- when you're representing a 14 client suing another client, you have an affirmative 15 obligation to obtain the informed consent -- 16 THE COURT: I'll tell you what. 17 MR. STOPA: Here's the best way -- 18 THE COURT: No, the best way for you to do it is 19 to raise it as an affirmative defense yourself and 20 then see if they want you to represent them because 21 these attorneys, these businessmen, these 22 corporations have gotten together and they've figured 23 out -- do you want to answer your phone? 24 MR. STOPA: No, Judge. I must have bumped it on 25 when I was sitting here. I'll turn it off.</p>
<p style="text-align: center;">118</p> <p>1 assignment of mortgage as a basis for standing," 2 except in these cases with Shapiro because they want 3 to minimize the impact of -- or the appearance of the 4 assignment in order to try to take the microscope off 5 of themselves. Nobody else has ever done that. A 6 conflict-free attorney who wasn't looking out for 7 himself would be preserving that argument for their 8 client. A conflict-free attorney would want to argue 9 every basis for standing possible as is done in every 10 other type of mortgage foreclosure case that I have. 11 There's a First District Case called Lincoln 12 Associates and Construction vs. Wentworth, 2010 First 13 District, 26 So.3d 638. Interestingly, opposing 14 counsel cited this in some of their written 15 responses. Continuing on -- starting on the second 16 column, 4-1.7 forbids a lawyer from representing two 17 clients in the same matter, "unless the lawyer 18 reasonably believes the representations will not 19 adversely affect the responsibilities to each client, 20 and each client consents in writing or on the 21 record" -- and that's under (b)(4) -- "Each client 22 gives informed consent confirmed in writing or 23 clearly stated on the record." There is absolutely 24 no evidence before this Court that JPMorgan Chase 25 Bank has consented to this simultaneous</p>	<p style="text-align: center;">120</p> <p>1 THE COURT: They've figured all this out and 2 they're saying, "I don't have a conflict of 3 interest." If they had -- if it was a \$1 million 4 piece of property and they had a \$300,000 mortgage 5 and a \$200,000 second, they'd be standing in line and 6 they wouldn't default. 7 MR. STOPA: Two responses. First, who from MERS 8 has told you that they've figured it out? Who from 9 MERS has told you that they -- 10 THE COURT: You know what? I'll tell you who 11 told me. Common sense tells me based upon my 12 lifetime experiences, based upon the fact that I sit 13 up here and I do these. There's a certain amount of 14 just common sense. You have to understand how 15 businesses work. 16 MR. STOPA: Let me put it like this. I called -- 17 Counsel in opening challenged my good-faith basis -- 18 THE COURT: And it's only here for the purposes 19 of this motion. 20 MR. STOPA: I understand. 21 THE COURT: You need to pick your battle. 22 MR. STOPA: Here's, I think, the issue. I called 23 the bar ethics and advertising more than once about 24 this issue, and present the pattern, and I would 25 encourage you to do that if you're interested. I</p>



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1 represent ABC Corporation as the plaintiff against
 2 XYZ. XYZ comes into my office and says, "I want you
 3 to represent me." They say, "I want you to represent
 4 me against ABC." I'm concerned. I say, "Well" --
 5 they say, "Well, you don't have to be concerned.
 6 Everybody's waived these conflicts." The bar didn't
 7 tell me that was okay. They said it's not.
 8 THE COURT: They say -- the bar tells you to
 9 proceed at your own risk, is what the bar tells you
 10 to do, and then if XYZ says, "You know you had a
 11 problem," then you do, but until such time as they
 12 raised it, you've done what you should do. You found
 13 out. The bar says, "I don't think so. It's a red
 14 flag, but you know, you can go out and do it at your
 15 own risk."
 16 MR. STOPA: How do we even know when all of these
 17 parties, such as MERS here, have not been joined as a
 18 defendant in the case? How do we even know that
 19 there's a problem?
 20 THE COURT: That's not my job, as they say. No,
 21 no, no. No, no, you're the person that's raising the
 22 issues. Go out, subpoena the officers, find out.
 23 That's how -- I'm not going to tell you how to do it.
 24 But if I were the attorney that was doing it, I'd --
 25 remember I said at the very beginning I represented

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1 some people from Citibank, some direct heirs, and it
 2 was fascinating to go talk to the law firms and the
 3 people that are way up the ladder there because it's
 4 a fascinating experience. Go put them under oath and
 5 ask the questions, and that's what you're going to
 6 have to do.
 7 MR. STOPA: I think that the issue here is bigger
 8 than that in the sense that this is something that's
 9 happening all the time in these types of situations,
 10 and from what I'm hearing, Your Honor is telling me
 11 that it is somehow -- it is my obligation to
 12 understand if entities who haven't been joined in a
 13 proceeding who should have been are adverse or claim
 14 an interest in this when it's that -- that would be
 15 their obligation under 4-1.7 to ascertain at the
 16 outset of the representation because -- and I have a
 17 lot of cases here that I want to get to about the
 18 appearance of --
 19 THE COURT: Don't they get served?
 20 MR. STOPA: -- the appearance of impropriety.
 21 THE COURT: Don't they get served?
 22 MR. STOPA: No, MERS has never been served here.
 23 THE COURT: Why are they here? They're here.
 24 MR. STOPA: Because they brought in an attorney,
 25 but we didn't hear any evidence from MERS that --

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1 THE COURT: Here's what you're missing. This is
 2 what you're not seeing. You got a record. I've made
 3 a ruling. You should go forward with it. That's
 4 what's here. That's how I see the big picture. You
 5 have made a case for yourself for all the people in
 6 the state of Florida. If it gets to Supreme Court
 7 and you're right, you're right, but they've -- you've
 8 laid the groundwork. You said, "These are all the
 9 parties."
 10 When they bring this lawsuit, it's notice to
 11 the world that this litigation is pending. The
 12 banks -- for example, I know there's a Tampa law firm
 13 that I think files like 60,000 cases and -- 9,500 a
 14 month, and they come before me and they represent all
 15 these different banks. They've gone through it and
 16 they've gotten permission to do these things. They
 17 don't just go blindly out into the world and hope
 18 that they don't get sued. They have -- I would
 19 imagine if you can get into some of the corporate
 20 records, you'll find out that they've gone out and
 21 they've talked and they've dotted their I's and
 22 crossed their T's.
 23 And I understand exactly what you say
 24 because you do the right thing. It's just like me
 25 when I was a young lawyer. If I thought I had a

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1 conflict, I called the bar and I got either an oral
 2 or a written response. But a conflict is real and/or
 3 perceived, and they're telling you these are
 4 guidelines, these are rules. Where you get in
 5 trouble is if you violate the trust, the laws, and
 6 you do some of these things that are clearly
 7 violations per se, but these are suggestions to the
 8 world that you ought not to do these things.
 9 They can proceed if they want to, but I
 10 don't think that -- you could raise the issue to the
 11 bar, but the bar will do an inquiry, and I don't know
 12 what the bar will do. But I don't think -- when they
 13 start presenting these corporate records and these
 14 attorneys saying, "No, we don't have a conflict of
 15 interest. We have a unanimity of interest. We want
 16 to clear up the cloud on the title. We want to clear
 17 our our debts. We want to clear out our banks. We
 18 want to file our IRS tax returns. We don't want to
 19 have these things on the book."
 20 It's the best interest of the City and the
 21 State and the County and the Government to clear
 22 these things up. Then this is the way to proceed.
 23 This is not my only rodeo. I have 4,000 of these,
 24 and what you don't know, but what I see is when there
 25 are interests that are common, that the law firm will



<p style="text-align: center;">125</p> <p>1 come in and represent two banks at the same time 2 because they have a commonality, but they don't ever 3 represent the homeowners association or some other 4 creditor sitting there on the outside. They 5 represent the two mortgage people because they have a 6 commonality of interest. 7 Some people just have problems and they 8 can't make the payments, but most of these that we 9 see, most of these are people that have 10 adjustable-rate mortgages. On some instances -- and 11 I'm saying this for the record and for all of you 12 that are sitting out here too -- there are mortgage 13 foreclosures, \$19 million, that I've had where 14 they've gone belly up and they got corporations 15 within corporations here in the United States and in 16 Malaysian and in Saudi Arabia, but one plaintiff is 17 bringing the action for the bank against all these 18 other parties. But I guarantee on a \$19 million 19 mortgage default and note default there's probably 20 two or three people that put the money up and several 21 banks are involved. 22 So I understand what you're saying. You've 23 made a good record and you've filed -- I would 24 suggest that you file the case law. I'm making a 25 decision so you can proceed. I think it's the right</p>	<p style="text-align: center;">127</p> <p>1 thinks about the appearance of impropriety with 2 respect to what's going on with these assignments. 3 It's not good. The opinions out there are -- 4 THE COURT: Let me say, "Hear, hear." You know, 5 we've got a great country. A lot of people don't 6 like a lot of things, and you can talk about it all 7 you want, and that's the neat part about it. And you 8 can come here and I'll let you -- the citizens of 9 Hillsborough County under the 13th Judicial Circuit 10 say that I can decide on those types of things. And 11 I believe in the constitution. I think free speech 12 is one of the most wonderful things that we have in 13 our country, and that's what people are saying out 14 there. 15 MR. STOPA: There's a -- 16 THE COURT: I got to follow the law, whether I 17 agree with it -- there's a lot of law out there I 18 don't particularly agree with, but I follow it. 19 MR. STOPA: Here, I think, is the point about it, 20 is that there's a huge segment of the public that 21 finds these assignments that are conveyed to yourself 22 instead of from whoever the noteholder was -- 23 THE COURT: And you're the -- 24 MR. STOPA: -- to be just absolutely disgusting. 25 THE COURT: And you're the knight on a white</p>
<p style="text-align: center;">126</p> <p>1 decision based upon what I've heard and seen. 2 MR. STOPA: Let me present -- 3 THE COURT: You can take all the time you want. 4 I just want you to understand I think you need to 5 file these things. I think you should. I would 6 encourage you to clear up what you perceive is wrong 7 and -- 8 MR. STOPA: Let me explain a little about -- and 9 I can understand what Your Honor is saying. Let me 10 tell you what I perceive to be wrong about this. A 11 lot of these cases about conflict talk not only about 12 whether there's an actual conflict, but the 13 appearance of impropriety -- and I have a fistful of 14 cases that talk about that. 15 And you have a situation here where the 16 undisputed evidence showed that the vice president of 17 CitiMortgage, Inc., signed an assignment and caused 18 on assignment to be recorded purportedly on behalf of 19 MERS. He signs on behalf of MERS when he's actually 20 the vice president of CitiMortgage, Inc. He's 21 essentially causing a document to be conveyed to 22 himself with the assistance of his own law firm. 23 Now you can -- I would encourage Your Honor, 24 as I've done, to go Google about these assignments. 25 Look them up on the Internet. See what the public</p>	<p style="text-align: center;">128</p> <p>1 charger that's carrying the lance for them, going out 2 there, and I said go forward. I understand exactly 3 what you're saying. So do they. It needs to be 4 said. It needs to be determined. And if you're 5 right, you know what's going to happen? You're going 6 to have three law firms involved in every case, or 7 five, and that's what will happen, and -- 8 MR. STOPA: I hear what you're saying, Judge. 9 THE COURT: I think you've made a record. I 10 think it's a clear record. I think you've presented 11 cases, but for this case at this time on these facts 12 based upon for when I've finished put all my thinking 13 on the record to make a decision up there where the 14 gentlemen that I truly respect and all the -- and I 15 respect my brethren here, but the second I listen to 16 the Supreme Court and my friends in the federal court 17 that I know -- and the Eleventh Circuit and the 18 Supreme Court, so I understand that. And do you know 19 who Gideon was? 20 MR. STOPA: Gideon/Wainwright? Gideon vs. -- 21 that's what's coming to mind. 22 THE COURT: Well, Gideon came out of Florida, and 23 he said -- I think he said on a piece of common 24 paper, "Wasn't I entitled to a lawyer?" And that's 25 how it all started under the constitution and I --</p>



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1 that came out, I think, out in Panama City.
 2 MR. STOPA: Well, I certainly think this is an
 3 issue for appellate review.
 4 THE COURT: And here you are, and you had your
 5 hearing --
 6 MR. STOPA: And I appreciate the opportunity
 7 to --
 8 THE COURT: And Shapiro brought in all the five
 9 attorneys, and I'd like to thank you for all of your
 10 presentation. I find everybody professional and
 11 well-educated and experienced.
 12 MR. STOPA: Thank you, Judge.
 13 THE COURT: For everyone here.
 14 MR. STOPA: Thank you for the hearing.
 15 THE COURT: You know, I get paid the big bucks to
 16 make these kind of issues. Thank you. It's a
 17 pleasure.
 18 MR. BROCHIN: Thank you, Judge.
 19 MR. RICHMAN: Thank you, Your Honor.
 20 THE COURT: Give me all your cases and I'll make
 21 sure they're a part of the record.
 22 MR. STOPA: Thank you, Judge.
 23 (Hearing concluded at 12:30 p.m.)
 24
 25

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1 CERTIFICATE OF REPORTER
 2
 3 STATE OF FLORIDA)
 4 COUNTY OF HILLSBOROUGH)
 5
 6 I, Olivia Caldwell, certify that I was authorized to
 7 and did stenographically report the proceedings; and
 8 that the foregoing pages, 1 through 129, are a true and
 9 complete record of my stenographic notes taken during
 10 said proceeding.
 11
 12 I further certify that I am not a relative, employee,
 13 attorney, or counsel of any of the parties, nor am I a
 14 relative or employee of any of the parties' attorneys or
 15 counsel connected with the action, nor am I financially
 16 interested in the action.
 17
 18 Dated this 25th day of June, 2010.
 19
 20
 21 Olivia Caldwell
 22 Notary Public
 23 State of Florida at Large
 24 My Commission Number: DD942467
 25 Expires: 11/24/2013

