ROBO-LITIGATION

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ABSTRACT

The recent housing crisis increased demand for attorneys to process foreclosures through state courts. This increase in demand was coupled with a desire for the fastest and cheapest legal services available. As a result, large foreclosure firms designed to handle an enormous number of foreclosure cases quickly and inexpensively evolved and flourished. During their ascendancy, these firms consistently generated complaints about their conduct, including questions about their ethical decision-making and about the veracity of the pleadings and documents they filed. Scholarly literature on the housing crisis, however, is largely devoid of commentary on ethical issues related to increased foreclosures.

This Article tracks the rise and fall of several notorious high volume foreclosure firms and to examine the numerous instances of serious misconduct their attorneys and paralegals perpetrated. The Article accordingly examines the curiously muted reaction from state bar associations, judges, and state legislators.

The Article then proceeds to examine how these foreclosure firms differ in makeup from traditional large law firms. Notable characteristics of these foreclosure firms include lenders and servicers' relentless demand for increased speed and low costs, lack of firm-specific capital at foreclosure law firms, and a factory-like atmosphere of legal practice. The Article concludes with an examination of three policy options to prevent another surge in attorney misconduct: changing ethical rules, improving ethical education, and increasing state bar association funding and authority.

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> "The responsibility that they expected people to have was above and beyond what a human being could actually do as far as case loads."
> —Tammie Mae Kapusta, former paralegal for foreclosure law firm[1]

> "You are acting as a robot for a plaintiff who is not even giving you the information you need to file a proper foreclosure. Now, if you choose to do that, you do that at your peril before this Court."
> —Judge Maxine Cohen Lando[2]

I. INTRODUCTION: QUESTIONS UNASKED

Many of the national press investigations of misconduct in foreclosure litigation revolves around "robo-signing" or other bank or servicer fraud.[3] Nevertheless, emerging research regarding the foreclosure crisis is distinct from the Enron scandal, in which many commentators' first inquiry was "Where were the lawyers"?[4] Here, by contrast, most of the attention paid to ethically dubious work has been aimed directly at the employees of banks and servicers.[5]

This Article attempts to answer the question of "where the lawyers were," during the robo-signing scandal and substantiates the fact that foreclosure lawyers were involved with their own questionable acts. Among a host of problematic practices, foreclosure attorneys have been cited for signing documents on behalf of servicers without having the authority to do so,[6] changing affidavits without knowledge of

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[1] Deposition of Tammie Kapusta at 51, In Re: Investigation of the Law Offices of David J. Stern, P.A., Atty. Gen. Case No. L10-3-1145 (Fla. Cir. Ct. Sept. 22, 2010) [hereinafter Kapusta Dep.], *available at* http://www.cbc.ca/news/pdf/2010-09-22-Deposition-of-Tammie-Lou-Kapusta.pdf.

[2] Transcript of Hearing on Order to Show Cause at 28, Cent. Mortg. Co. v. Gonzalez, No. 09-4075 CA 01 (Fla. Cir. Ct. Feb. 11, 2011), *available at* http://www.scribd.com/doc/52571095/FL-Foreclosure-Lawyer-Contempt-Transcript.

[3] *See, e.g.*, Jim Zarroli, *JPMorgan Suspends Some Foreclosures*, NAT'L PUB. RADIO (Sept. 30, 2010), http://www.npr.org/templates/story/story.php?storyId=130247584. "Robo-signing" is typically understood to contemplate the practice of bank or servicer employees signing large amounts of affidavits or other legal documents for use in foreclosure cases without verifying the facts therein or following proper notarization procedures. *See, e.g.*, Raymond Brescia, *Leverage: State Enforcement Actions in the Wake of the Robo-Sign Scandal*, 64 ME. L. REV. 18, 25-26 (2011).

[4] *See, e.g.*, M. Peter Moser & Stanley Keller, *Sarbanes-Oxley 307: Trusted Counselors or Informers?*, 49 VILL. L. REV. 833, 834 (2004) ("One of the questions persistently asked has been why the lawyers who represented these companies and handled their transactions did not question management's conduct and the propriety of the transactions that have gathered notoriety."); *see also* Donald C. Langevoort, *Where were the Lawyers? A Behavioral Inquiry Into Lawyers' Responsibility for Clients' Fraud*, 46 VAND. L. REV. 75 (1993) (inquiring into lawyers responsibility in the savings and loan scandals of the 1980s).

[5] *See, e.g.*, Raymond H. Brescia, *Tainted Loans: The Value of a Mass Torts Approach in Subprime Mortgage Litigation*, 78 U. CIN. L. REV. 1 (2009).

[6] OFFICE OF THE COMPTROLLER OF THE CURRENCY, OFFICE OF THRIFT SUPERVISION, FED. RESERVE SYS., INTERAGENCY REVIEW OF FORECLOSURE POLICIES AND PRACTICES 9 (Apr. 2011).

servicers,[7] filing a myriad of false or inappropriate claims in pleadings,[8] filing documents signed by attorneys who had already left the firm,[9] signing blank documents with information to be filled in later,[10] repeatedly missing hearings without notifying other parties or the court,[11] and ignoring notarization requirements.[12]

Therefore, this Article seeks to fill the void in the scholarly literature by investigating misconduct by foreclosure attorneys and exploring the causes of such ethical lapses. Part II proceeds with a brief description of the foreclosure process and the attorney's role in foreclosure litigation. Part III presents some case studies of particularly notorious law firms, including law firms that imploded under the weight of scandal.

Part IV examines the reaction of regulatory authorities. Part V considers various causes of the misconduct, and Part VI suggests possible reforms.

II. FORECLOSURE LITIGATION IN THE UNITED STATES: TWO PATHWAYS

Before discussing the attorney misconduct that is at the core of this Article's inquiry, the Article will examine the role of attorneys in foreclosure litigation in the United States. Foreclosure is divided into two distinct processes among states: judicial foreclosures and nonjudicial or power-of-sale foreclosures.[13] In judicial foreclosure states, banks and servicers proceed similarly to Plaintiffs in any other kind of litigation conducted in court with judicial supervision.[14] Plaintiffs must file a lawsuit and proceed to judgment, whether at trial or through summary procedures.[15] States with judicial foreclosures have been noted to have extensive time delays in processing cases from inception to judgment.[16]

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[7] *Id*.

[8] *See, e.g.*, In Re: Amendments to the Fla. Rules of Civil Procedure at 4, No. SC09-1460, (Fla. Feb. 11, 2010) (responding to inappropriate lost note claims).

[9] Susan Taylor Martin*, Banks Gum Up Foreclosures*, TAMPA BAY TIMES, Sept. 7, 2011.

[10] Kapusta Dep., *supra* note 1, at 68.

[11] Order Adjudicating Plaintiff's Attorneys in Contempt of Court at 2, HSBC Bank USA v. De Freitas, No. 2007-CA-007993 (Fla. Cir. Ct. Sept. 2, 2010), *available at* http://floridaforeclosurefraud.com/wp-content/uploads/2010/09/ORDER-HSBC-v-ANTONIO-DEFREITAS.pdf.

[12] Press Release, Eric T. Schneiderman, Attorney Gen., N.Y. State Office of the Attorney General, A.G. Schneiderman Announces $4 Million Settlement with New York Foreclosure Law Firm Steven J. Baum P.C. and Pillar Processing LLC (Mar. 22, 2012), *available at* http://www.ag.ny.gov/press-release/ag-schneiderman-announces-4-million-settlement-new-york-foreclosure-law-firm-steven-j.

[13] Frank S. Alexander et. al., *Legislative Responses to the Foreclosure Crisis in Nonjudicial Foreclosure States*, 31 REV. BANKING & FIN. L. 341, 343 (2011).

[14] *Id*.

[15] *Id*.

[16] *See, e.g.*, Krista Franks Brock, *Moody's: Foreclosure Timelines on the Rise; More Losses to RMBS*, DSNEWS.COM (Mar. 23, 2012), http://www.dsnews.com/articles/moodys-foreclosure-timelines-on-rise-more-losses-to-rmbs-2012-03-23 (noting that judicial

In nonjudicial or power-of-sale states, by contrast, lenders and servicers can simply mail notice to a homeowner, publish an advertisement of sale in a newspaper, and set an auction date.[17] To assert defenses to the foreclosure, homeowners must institute a lawsuit in court as a plaintiff.[18] Without filing a court action, homeowners have no opportunity to have their defenses heard by a judge.[19] This nonjudicial system is utilized by a majority of states.[20]

Although both judicial and nonjudicial systems require attorney assistance for foreclosing entities, judicial systems tend to require greater work on the part of lenders' attorneys. This is due to the increased burdens of proof placed on banks and servicers in judicial foreclosure systems[21] and the fact that more homeowners will contest foreclosure in judicial systems due to the easier access to courts the system provides.[22] Thus, lenders' attorneys filed more paperwork in judicial states and their actions were and are more easily examined by homeowners and their attorneys.

The "robo-signing" and fraudulent foreclosure documentation scandals that broke national headlines in late 2010 were driven in large part by discovery taken in judicial state foreclosure litigation. The fact that judicial foreclosure systems required additional paperwork to foreclose and homeowners had an easier pathway to examine banks' claims led to judicial states producing an outsized influence on national foreclosure news.[23]

Similarly, this Article's findings focus primarily on the conduct of attorneys in judicial states such as Florida and New York. Because foreclosure attorneys in judicial states must produce more documentation to substantiate their claims, and because these documents are subject to more judicial scrutiny than those in nonjudicial states, news coverage of attorney misconduct has focused primarily on judicial states.[24]

The robo-signing scandals exposed that foreclosure attorneys were not properly vetting their clients' documentary evidence. This Article, however, seeks to fill the void in current foreclosure law literature by expanding the examination of questionable procedures in foreclosure cases to affirmative acts, documentation produced, and pleadings executed by attorneys themselves. In many respects, the core causes of such attorney malfeasance are similar to the causes of the robo-signing controversy: exponential growth in the number of foreclosure cases coupled with an unceasing drive to decrease foreclosure processing times and to foreclose inexpensively. Part III proceeds with in-depth, case study examinations of law firms

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foreclosure timelines average 654 days, whereas nonjudicial foreclosures age an average of 297 days).

[17] *See* Alexander et al., *supra* note 13, at 343.

[18] *Id*.

[19] *Id*. at 345.

[20] *Id*. at 343.

[21] *Id*. at 344.

[22] *Id*. at 345.

[23] Yuki Noguchi, *Foreclosures: A Busted System or Veiled Opportunity?*, NAT'L PUB. RADIO (Oct. 6, 2010), http://m.npr.org/news/front/130376768?page=0.

[24] *See generally infra* Part III.

that exemplify this exponential growth and the business model and attendant ethical lapses that accompanied their practice.

III. THE POSTER CHILDREN

A. David J. Stern

The saga of David J. Stern's meteoric rise and fall contains all the elements of a tawdry legal thriller. A graduate of the South Texas School of Law,[25] he earned his bachelor's degree in criminal justice.[26] The legend of Stern holds that he "relentlessly pursued the mortgage industry's most coveted lenders and did whatever was necessary to keep them as clients."[27] From his beginning steps of defecting from another debt collection firm with some other attorneys in 1993, Stern built a multimillion dollar foreclosure law firm and business, giving himself a lifestyle few can imagine—an "armada of luxury vehicles," "private jets," multiple vacation homes, and a 130 foot yacht called "The Misunderstood."[28] The self-described "hyper-energetic" man with the "neurotic ego" who did not "require sleep or food"[29] was named Fannie Mae's lawyer of the year in 1998 and 1999 for his relentless efficiency and speed in processing foreclosures.[30]

1. The Early Years and Ignored Warning Signs

From the start of his emergence as a powerful player in the consumer debt law market, Stern earned his reputation for controversy and questionable methods. As early as 2002, the Florida Bar disciplined him for his firm's billing practices.[31] Prior to 1999, Stern had employees of his law firm conduct title searches, a normal prerequisite to lenders beginning foreclosure litigation.[32] However, Stern's attorneys submitted affidavits that made the title searches appear as if they had been performed by a wholly separate and legally distinct entity.[33]

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[25] Diane C. Lade, *David J. Stern, The Man Behind the Crumbling Foreclosure Empire*, SOUTH FLA. SUN-SENTINEL, Mar. 15, 2011, at 1A.

[26] *Id*.

[27] *Id*.

[28] *Id*. The yacht was reportedly called "Su casa es mi casa," or "Your house is my house," but Stern denied this to the *New York Times*. Rey Sanchez, *Florida Foreclosure Lawyer David Stern Investigated*, ABC NEWS (Oct. 12, 2010), http://abcnews.go.com/Business/florida-foreclosure-lawyer-david-stern-investigated/story?id=11854272.

[29] Deposition of David J. Stern at 40, 62, Mowat v. DJSP Enters., Inc., Case No. 10-62302-CIV-UNGARO (S.D. Fla. Apr. 25, 2011) [hereinafter Stern Dep.] (Volume I), *available at* http://www.scribd.com/doc/76264148/Deposition-of-David-J-Stern. Stern stated that he lived on three to four hours of sleep each night. *Id*. at 14.

[30] Zachary A. Goldfarb & Ariana Eunjung Cha, *Mortgage Giants Fed Document Problems*, WASH. POST, Dec. 23, 2010, at A01.

[31] The Fla. Bar v. David James Stern, No. SC02-01-1991 (Fla. 2002) (consent judgment).

[32] *Id.* at 2.

[33] *Id*.

Because of this practice, Stern consented to the disciplinary judgment of a public reprimand and to two on-site inspections of his law firm.[34] Stern agreed that he had violated Florida Bar Rule 4-8.4, concerning "conduct prejudicial to the administration of justice."[35] Apparently in return for Stern's agreement to the consent judgment, the Florida Bar waived or ignored its original contentions that Stern had billed nonlawyer work at attorney rates,[36] that he systematically overbilled clients,[37] and that he had substantially relied on nonlawyer staff which inhibited foreclosure defendants' rights.[38]

Thus, as far back as 2002, the Florida Bar did not follow through on its original suspicions that Stern violated rules regarding: (1) acts contrary to honesty and justice;[39] (2) collecting excessive fees;[40] (3) making false statements or allowing witnesses to present false statements;[41] (4) communicating the proper rate to clients;[42] (5) conflicts of interest;[43] and (6) assuring that nonlawyer conduct meets "the professional obligations of the lawyer."[44]

Instead, the Florida Bar and the Florida Supreme Court were content to give Stern the second-lowest form of punishment available to the Florida Bar,[45] a public reprimand.[46] But as the years progressed, the controversies surrounding Stern only grew more serious.

The Florida Supreme Court next encountered Stern's blundering in a malpractice action.[47] Stern's firm had been retained on behalf of a mortgage assignee.[48] Instead of substituting into a pending foreclosure case as new counsel, Stern filed a new foreclosure case and dismissed the first suit.[49] Unfortunately for Stern, the new case

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[34] *Id*.

[35] Complaint at 6, Fla. Bar v. Stern, Case No. SC02-01-1991 (Fla. 2002).

[36] *Id*. at 5.

[37] *Id*. at 8.

[38] *Id*. at 9-10.

[39] *Id*.

[40] *Id*.

[41] *Id*.

[42] *Id*. at 7.

[43] *Id*. at 8-9.

[44] *Id*. at 10.

[45] FLORIDA'S STANDARDS FOR IMPOSING LAWYER SANCTIONS (B)2.5 at 15 (2000), *available at* http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/18F71B077A612FB785256DFE00664509/$FILE/lawyersanctions03.pdf?OpenElement.

[46] Such "public" reprimands are published in the *Florida Bar News*, whose circulation is obviously limited mainly to attorneys.

[47] Law Office of David J. Stern v. Sec. Nat'l Servicing Corp., 969 So. 2d 964 (Fla. 2007).

[48] *Id*. at 965.

[49] *Id.*

was barred by the statute of limitations.[50] According to the Supreme Court's opinion, "Stern essentially [admitted] this was malpractice."[51] The Supreme Court, however, ruled that legal malpractice claims cannot be assigned, which allowed Stern off the hook once again.[52]

Those were not the only instances of Stern's brushes with professional regulation prior to the foreclosure crisis. Stern and the firm, for example, found themselves as defendants in several lawsuits. One particularly lurid sexual harassment complaint alleged that Stern tore female employees' pantyhose, stuck his tongue in the ear of a paralegal, routinely grabbed female employees, and propositioned employees in a *quid pro quo* manner.[53] Stern settled another class action suit regarding questionable fee collections for $2.2 million in 2000.[54] A different 2009 class action suit filed in Palm Beach County[55] sought damages under Florida's debt collections practices statute[56] and Florida's Deceptive and Unfair Trade Practices Act.[57] Other causes of action stated by various plaintiffs included causes under the Federal Debt Collections Practices Act,[58] Racketeer Influenced and Corrupt Organizations Act (RICO),[59] and securities fraud.[60] Thus, even while Stern's business grew, his reputation for attracting disciplinary investigations, malpractice concerns, and questions about his treatment of female associates was evident.

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[50] *Id*.

[51] *Id*.

[52] *Id*.; *see also Legal Malpractice Claim Can't be Assigned, Florida Supreme Court Says*, LAW. WKLY., July 30, 2007, at 6.

[53] Complaint at 5-6, Balboni v. Law Offices of David J. Stern, P.A., No. 99-6009 (S.D. Fla. July 6, 1999).

[54] Goldfarb & Cha, *supra* note 30.

[55] Hewitt v. Law Offices of David J. Stern, P.A., No. 50 2009 CA 036406 XXXX MB (Fla. Cir. Ct. 2009).

[56] Complaint at 6, Hewitt v. Law Offices of David J. Stern, P.A., No. 50 2009 CA 036406 XXXX MB (Fla. Cir. Ct. 2009).

[57] *Id*. at 12-13. The case alleged that Stern's law firm sent a reinstatement letter containing figures that were not due and owing. *Id*. at 7-8. Similar causes of action were alleged in Banner v. Law Offices of David J. Stern, P.A., No. 50 2007 CA 000815 (Fla. Cir. Ct. 2007); *see* Law Offices of David J. Stern, P.A. v. Banner, 50 So. 3d 1221 (Fla. Dist. Ct. App. 2010).

[58] Complaint, San Martin v. Law Offices of David J. Stern, P.A., No. 0:10-cv-61342-XXXX (S.D. Fla. 2010).

[59] Complaint, Figueroa v. David J. Stern, P.A., No. 0:10-cv-61296-CMA (S.D. Fla. July 26, 2010).

[60] Kim Miller, *David J. Stern Wins Dismissal in Proposed Securities Class Action*, PALM BEACH POST REAL ESTATE BLOG (Sept. 30, 2011, 1:09 PM), http://blogs.palmbeachpost.com/realtime/2011/09/30/david-j-stern-wins-dismissal-in-proposed-securities-class-action/. Investors in DJSP sought relief based upon allegedly false and misleading statements Stern made to "talk up" the company. The case was dismissed in Fall 2011. *Id.*

2. The Big Sale and the Boom

As Stern's business thrived during the downturn in the housing market, he sold the "non-legal operations" of his firm—mainly document preparation, processing, and title searches—to a Chinese investment group in late 2009.[61] The sale netted Stern's companies $111 million and the new company, known as David J. Stern Enterprises (DJSP) began to trade on NASDAQ.[62]

The foreclosure boom saw Stern's law firm soar to new heights. At the height of its business, the firm employed roughly 1,200 people and filed "up to 75,000 cases a year."[63] As of April 2010, "the firm was the largest filer of foreclosure suits in Florida."[64] He claimed to process 20 %of the state's foreclosures.[65] One former attorney claimed that "Stern attorneys could carry caseloads of up to 2,500 foreclosures" and that "paralegals prepared most of the paperwork."[66]

DJSP increased profits from $8.6 million in 2006 to $44.6 million in 2009.[67] The company outsourced foreclosure document preparation work to the Philippines and Guam.[68] One can reasonably assume Stern's law firm profits skyrocketed as well, as it averaged 5,800 new foreclosure complaints per month as of April 2010.[69] By all accounts, then, when the housing market failed, David J. Stern profited.

3. The Salty Revelations and the End

On August 10, 2010, after receiving continuous reports of fabricated or doctored documents, the Economic Crimes Division of the Florida State Attorney General's office announced an investigation of foreclosure law firm practices.[70] Stating that his office had received forty-eight complaints about Stern's law firm, the Attorney General named three high-volume foreclosure firms in the investigation.[71] The probe was later expanded to other law firms. In the face of the investigation, Stern,

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[61] *Chardan 2008 China Acquisition Enters Into Business Combination with DAL Group—Update*, RTT NEWS (Dec. 13, 2009, 11:15 AM), http://www.rttnews.com/1155984/chardan-2008-china-acquisition-enters-into-business-combination-with-dal-group-update.aspx.

[62] *Id.*; Michael Sasso, *Foreclosure Mill's Revenue Skyrockets*, TAMPA TRIB., Apr. 22, 2010, at 1.

[63] Lade, *supra* note 25.

[64] Sasso, *supra* note 62.

[65] Diane Lade & Doreen Hemlock, *Foreclosure Error: 1 Home, 2 Owners*, SOUTH FLA. SUN-SENTINEL, Dec. 5, 2010, at 1A.

[66] Christine Stapleton & Kimberly Miller, *New Lawyers Face Probes, Pop Up at Other Firms; The Novices Draw Suspicion in the Foreclosure Filing Mess*, PALM BEACH POST, Dec. 26, 2010, 1A.

[67] *Id*.

[68] Sanchez, *supra* note 28.

[69] Stapleton & Miller, *supra* note 66.

[70] Kim Miller, *State Probes Whether Three Law Firms Falsified Foreclosure Documents*, PALM BEACH POST, Aug. 10, 2010.

[71] *Id*.

however, maintained that "'[t]here has not been submission of fraudulent documents. We feel a lot of it is politically motivated. We have done nothing wrong.'"[72]

After news of robo-signing hit the national press, Senator Barney Frank and two Florida members of Congress sent a letter to Fannie Mae demanding to know why it continued to employ Stern and the other Florida firms under investigation.[73] Stating a rather obvious question, the letter queried, "Why is Fannie Mae using lawyers that are accused of regularly engaging in fraud to kick people out of their homes"?[74]

In the midst of the national debate on robo-signing and fraudulent documents being submitted to courts,[75] Florida's Attorney General dropped three bombshells: he released depositions of former David J. Stern employees. The salacious allegations they contained spelled doom for the future of Stern's firm. The most important revelations were as follows:

> Former Stern employees, Kelly Scott and Tammie Kapusta, revealed that Stern's right hand paralegal and COO would sign documents in large stacks—that were already notarized and witnessed—without actually reading the documents.[76]
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> Stern's employees signed documents using the signature of Stern's COO, purportedly because she got so tired signing more than five hundred documents a day.[77]
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> Stern's firm would direct its process servers to backdate service of process where service was contested or not perfected, or to otherwise falsely increase the charges for service of process.[78] Employees were directed to ignore the daily calls to the firm from homeowners regarding improper service of process.[79] According to the former employees, everyone at the firm, including attorneys, was aware of the faulty service of process procedures.[80]
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> Stern's employees were directed to hide hundreds of files from Fannie Mae and Freddie Mac officials who came to the firm to inspect and audit

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[72] Gretchen Morgenson & Geraldine Fabrikant, *Florida's High-Speed Answer to a Foreclosure Mess*, N.Y. TIMES, Sept. 4, 2010.

[73] Kim Miller, *Ally No Longer Sending Foreclosures to Law Firm*, PALM BEACH POST, Sept. 30, 2010.

[74] Letter from Alan Grayson, Barney Frank & Corrine Brown, Members of Congress, to Michael J. Williams, President & Chief Exec. Officer, Fannie Mae (Sept 24, 2010).

[75] *See, e.g.*, Alistair Barr, *Robo-Signing Controversy Spreads: J.P. Morgan's Chase Unit Stops Some Foreclosures to Review Process*, MARKETWATCH (Sept. 29, 2010, 6:40 PM), http://www.marketwatch.com/story/robo-signer-controversy-spreads-2010-09-29.

[76] Deposition of Kelly Scott at 11-13, In Re: Investigation of the Law Offices of David J. Stern, P.A., No. L10-31095 (Fla. Cir. Ct. Oct. 4, 2010) [hereinafter Scott Dep.], *available at* http://www.propublica.org/documents/item/october-2010-deposition-by-kelly-scott-law-offices-of-david-stern; Kapusta Dep., *supra* note 1, at 40.

[77] Scott Dep., *supra* note 76, at 21-22.

[78] *Id.* at 31.

[79] Kapusta Dep., *supra* note 1, at 14-15.

[80] Scott Dep., *supra* note 76, at 25.

> the firm's procedures.[81] This would involve either changing client codes for computer access or physically hiding files with problematic issues.[82] During these visits, Stern would wine and dine the very Fannie Mae and Freddie Mac officials responsible for the audits.[83]
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> The firm permitted various paralegals to use other peoples' notary stamps.[84]
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> The firm took signature pages of bank or servicer employees from affidavits and attached them to other affidavits as needed.[85]
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> Attorneys signed affidavits that contained blank spaces for amounts to be charged.[86]
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> In addition to the various violations of ethical and professional violations alleged in the depositions, Stern supposedly violated the rules of good taste as well, continuing to earn his reputation for philandering.[87] One former employee remarked that Stern had "quite a few" girlfriends at the firm, buying them roses, properties, cars, and jewelry.[88]

A former process server who worked for a company Stern's firm hired also cast light on sketchy practices. When questioned about records that showed fifty to seventy effectuations of service of process over a three day period in the fall of 2009 (for a total of $30,000 a day) on Stern files, the process server quipped, "'There's no way they could have that many legitimate papers [. . .] There were only three of us who worked the county.'"[89] Combined with Scott and Kapusta's testimony regarding service of process, one can reasonably suspect that Stern's law firm committed serious ethical violations, including submitting affidavits to courts billing for service of process that never occurred. The foreclosure scandals, therefore, did not only encompass conduct by banks and servicers; rather, attorneys and paralegals had been guilty of their own shockingly similar misconduct.

Swift repercussions followed from the deposition releases. The national press quickly picked up on the sensationalistic testimony.[90] Citigroup and GMAC

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[81] *Id.* at 39-43.

[82] *Id*.

[83] *Id.* at 43.

[84] Kapusta Dep., *supra* note 1, at 23.

[85] *Id.* at 42-43.

[86] *Id.* at 68.

[87] *Id.* at 89; Scott Dep., *supra* note 76, at 49.

[88] Kapusta Dep., *supra* note 1, at 89. Stern, ever classy, stated that Kapusta "has no credibility," that one of his chief assistants had deemed Kapusta a "fruitcake," and that Kapusta had "lost her only child to her blind husband." *See* Stern Dep., *supra* note 29, at 137.

[89] Shannon Behnken, *Foreclosure Documents Shed Light on Billing*, TAMPA TRIB., Oct. 28, 2010.

[90] *See, e.g.*, Eric Dash & Nelson D. Schwartz, *Foreclosure Problems Follow Years of Inattention; Critics Say Banks Waited too Long to Act on Rising Tide of U.S. Defaults*, INT'L. HERALD TRIB., Oct. 15, 2010.

mortgage immediately stopped referring cases to Stern.[91] The final blow to the Stern firm occurred when Fannie Mae and Freddie Mac announced they would stop referring cases to Stern.[92] Stern called the decision "political," refused to admit that he knew of any faulty practices employed at his firm, and blamed any problems on one of his chief assistants.[93]

Fannie Mae and Freddie Mac, whom Stern called "his babies," had referred the majority of his business.[94] After the crippling announcement, Stern resigned as DJSP's chairman, and the company laid off three hundred people within a few weeks of the GSE announcements.[95] As for the law firm, 560 layoffs were announced in one swoop, with employees given just hours to clear their personal belongings and vacate the premises.[96] Stern said he planned to eliminate 70% of the company's staff.[97]

4. The Aftermath

Removing Stern as counsel from so many foreclosure cases immediately wrought havoc on state courts, leaving "an estimated "100,000 cases statewide in question."[98] New counsel inundated the courts with motions to stop foreclosure sales, and thousands of foreclosure auctions, (granted only after final judgment in Florida, a judicial foreclosure state), were cancelled.[99] Some auctions went forward with no

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[91] *Id.* Wells Fargo trickled in with its cancellation of Stern's representation, albeit a week after Fannie Mae and Freddie Mac announced their cancellation of referrals. Kim Miller, *Wells Fargo Quits the Law Offices of David J. Stern*, PALM BEACH POST REAL ESTATE BLOG (Nov. 10, 2010, 7:31 PM), blogs.palmbeachpost.com/realtime/2010/11/10/wells-fargo-quits-the-law-offices-of-david-j-stern.

[92] Michael Riley & Lorraine Woellert, *Fannie Mae Suspends Use of Stern Law Firm From Foreclosure Work*, BLOOMBERG (Oct. 20, 2010), http://www.bloomberg.com/news/ 2010-10-20/fannie-mae-suspends-use-of-stern-foreclosure-law-firm-pending-review.html; *see also Mortgage Giants Cut Ties with Fla. Law Firm*, WASH. POST, Nov. 3, 2010.

[93] Stern Dep., *supra* note 29, at 145. Stern said of his assistant, who had worked with him since the beginning of the Stern law firm and had helped him become madly wealthy, "I had tremendous trust and confidence in her and let her run the show. Not knowing that anything was wrong, I watched my world unravel." *Id*. at 38,145.

[94] Diane C. Lade & Harriet Johnson Brackey, *Mass Layoffs at Stern as Foreclosure Law Firm Loses Top Clients*, SOUTH FLA. SUN-SENTINEL, Nov. 5, 2010.

[95] Diane C. Lade, *Plantation Foreclosure Company's Director Quits Amid Investigation of Illegal Evictions; 300 Workers Laid Off*, SOUTH FLA. SUN-SENTINEL, Oct. 26, 2010.

[96] Harriet Johnson Brackey, *Read the Stern Layoff Memo*, SOUTH FLA. SUN-SENTINEL, Nov. 4, 2010. In the memo to employees, Stern claimed that "[t]he referral of new business has decreased by over 90 percent in the last six months." *Id.*

[97] *Id*.

[98] Kim Miller, *Questionable Foreclosure Cases, Once Handled By David Stern's Offices, to be Heard in Court Today*, PALM BEACH POST, May 6, 2011.

[99] Kim Miller, *Half of All Palm Beach County Home Foreclosure Auctions Called Off*, PALM BEACH POST, Nov. 11, 2010.

attorney representation, resulting in home sales for as little as $200.[100] One Floridian bought a property in foreclosure via short sale, only to have Stern withdraw and allow the home to be sold to a third party.[101] Palm Beach County was forced to hold status conferences to ascertain which firm, if any, was substituting in as counsel for various banks and servicers.[102]

After Stern's resignation as head of DJSP, more than 70% of DJSP employees were fired.[103] When the statistics are combined with the law firm, 1,200 people out of 1,400 workers at DJSP and the Stern law firm were laid off as of January 2011.[104]

Attorneys from Stern's law firm did not simply disappear; rather, they diffused into other law firms, including those that were already under investigation by the Florida Attorney General.[105] Thus, despite Fannie Mae and Freddie Mac withdrawing their support for Stern and his firm's practices, many of the same attorneys that practiced at Stern are now doing legal work at Fannie designated firms.[106] Stern was named to South Florida New Times's "Dirty Dozen," its list of "2010's most despicable people.[107]

Later, in March 2011, Stern announced the closure of his law firm.[108] DJSP "voluntarily de-listed its shares" from NASDAQ after the stock dropped to "pennies" from a year-high of $21.80.[109] And thus ended the dazzling rise of David Stern which had made him wealthy beyond most Americans' wildest dreams.

The collapse of the law firm and of DJSP spawned much litigation. Stern filed suit against CitiMortgage, Inc. for failure to pay for work performed, while CitiMortgage fired back that Stern "'falsely reported' that it had completed tasks on files that it had not."[110] Meanwhile, ex-employees of his firms sought class action status for a complaint alleging violation of the notice requirements of the Worker

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[100] Kim Miller, *A House for $200? Foreclosure Confusion Leads to Rock Bottom Auction Prices*, PALM BEACH POST, Dec. 9, 2010.

[101] Lade & Hemlock, *supra* note 65.

[102] Miller, *supra* note 98.

[103] Diane C. Lade, *Stern Resigns as Head of Foreclosure Company*, SOUTH FLA. SUN-SENTINEL, Nov. 22, 2010.

[104] John Schwartz, *Judges Take Aim at Lawyers in Foreclosure Cases; Some Courts in U.S. Push Them to Vouch for Accuracy of Documents*, INT'L. HERALD TRIB., Jan. 12, 2011.

[105] Stapleton & Miller, *supra* note 66.

[106] *Id*.

[107] Michael J. Mooney, *The Dirty Dozen*, NEW TIMES BROWARD-PALM BEACH, Dec. 30, 2010. The *New Times* ranked Stern a ten on the "dirt meter." *Id.*

[108] Julie Creswell, *A Lawyer Under Investigation Shuts Down His Foreclosure Practice*, N.Y. TIMES, Mar. 8, 2011.

[109] Christine Stapleton, *DJSP Unable to Meet SEC Filing Deadline*, PALM BEACH POST REAL ESTATE BLOG (Apr. 4, 2011, 2:34 PM), http://blogs.palmbeachpost.com/realtime/2011/04/04/djsp-unable-to-meet-sec-filing-deadline/.

[110] Kimberly Miller, *Bank Accuses Foreclosure Mill of Negligence, Says it Won't Pay for Previous Work*, PALM BEACH POST REAL ESTATE BLOG (Apr. 8, 2011, 12:17 PM), http://blogs.palmbeachpost.com/realtime/2011/04/08/bank-accuses-foreclosure-mill-of-negligence-says-it-won%E2%80%99t-pay-for-previous-work/.

Adjustment and Retraining Notification Act.[111] Their lawsuit resulted in a preliminary $502,000 settlement.[112]

Worse for Stern, his insurance carrier covering expenses for defense of earlier class action claims against him filed a lawsuit to avoid coverage.[113] The insurance company sought to avoid coverage based upon the fraud exclusion in its contract.[114] The final insult in the Stern saga was DJSP Enterprises, Stern's spinoff document processing company, suing Stern and his law firm for $60 million.[115] The investment company that merged with Stern's nonlegal processing and title companies accused Stern of fraud, misrepresentation, and other mistruths in order to induce the spinoff transaction, which netted Stern $60 million personally.[116]

While dealing with multiple lawsuits, Stern faced further consternation when the Florida Bar filed a complaint against him alleging that Stern violated a court order requiring a response to a lawsuit.[117] But that was a minor setback when compared to a state appellate court opinion which quashed subpoenas served on foreclosure firms by the State Attorney General, effectively ending the investigation of foreclosure plaintiff's attorneys by anybody other than the Florida Bar.[118] As of February 2013, the Florida Bar has not yet reprimanded David Stern in any way.

B. Steven J. Baum

While the New York law firm of Steven J. Baum did not expose quite as many lascivious details as did the Stern collapse, Baum's firm did manage to accomplish just as steep of a rise and fall.

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[111] Martha Neil, *Some 700 Ex-Employees Can Pursue Class Action Against Onetime Fla. Foreclosure King*, ABAJOURNAL.COM (Sept. 28, 2011, 12:10 PM), http://www.abajournal.com/news/article/some_700_ex-employees_can_pursue_class_action_ against_onetime_fla._foreclos/.

[112] Donna Gehrke-White, *Former Staff at Closed David J. Stern Law Firm to Receive Settlement*, SOUTH FLA. SUN-SENTINEL, Mar. 17, 2012.

[113] Kim Miller, *Stern Insurer Wants Out of Policy, Says it Doesn't Cover Claims Involving "Fraud"*, PALM BEACH POST REAL ESTATE BLOG (Aug. 15, 2011, 10:45 AM) http://blogs.palmbeachpost.com/realtime/2011/08/15/stern-insurer-wants-out-of-policy-says-it-doesn%E2%80%99t-cover-claims-involving-%E2%80%9Cfraud%E2%80%9D/.

[114] Complaint at ¶ 28, 46, Admiral Ins. Co. v. Law Offices of David J. Stern, No. 9:11-cv-80914-KAM (S.D. Fla. 2011), *available at* http://blogs.palmbeachpost.com/realtime/files/2011/08/davidsternsuit.pdf.

[115] Kim Miller, *Investors Sue Stern Over $60 Million*, PALM BEACH POST, Jan. 4, 2012.

[116] Complaint at 21, DJSP Enters. v. Stern, No. CACE 12000096 (Fla. Cir. Ct. Jan. 3, 2012).

[117] Fla. Bar v. Stern, No. SC11-1192 (Fla. 2011).

[118] Kimberly Miller, *Ruling Ends Probe of Law Firms: The Attorney General's Attempt to Subpoena Foreclosure Mills Stalls*, PALM BEACH POST, Feb. 3, 2012. As this Article goes to press, the Florida Bar has commenced disciplinary proceedings against Stern, finding probable cause of rule violations in seventeen cases; these charges could take months to resolve. Kimberly Miller, *Florida Bar Pursues Discipline Against Former Foreclosure Mill Boss David J. Stern*, PALM BEACH POST (Feb. 4, 2013, 3:39 PM), http://www.palmbeachpost.com/news/business/real-estate/florida-bar-pursues-discipline-against-foreclosure/nWFjh/.

Steven Baum took over his father's law practice in 1999 and "super-sized it."[119] At the height of his business, he had roughly five hundred employees and, like Stern, had started a document processing company.[120] Similar to Stern and other foreclosure volume firms, the Baum firm worked for rock bottom flat fees.[121] Baum's firm handled roughly 40% of all New York foreclosures.[122] The rise in business due to the housing crisis netted Baum handsome rewards personally, as he was able to sell his document processing company to third party investors just as Stern had done.[123]

Like Stern, Baum attracted litigation and controversy over his methods. Baum's firm was prone to the same kinds of errors Stern was, including failing to divulge mortgage payments and filing of shady assignments.[124] The Manhattan U.S. Bankruptcy Trustee's office revealed it "had its [. . .] office monitoring cases involving the Baum firm," and various judges threw out cases in which Baum filed questionable documents.[125] Attorneys who took over representation of Chase admitted that Baum had filed inaccurate documentation to try to fix missing chain of title information.[126]

Judge Arthur Schack, who has become a kind of folk hero to homeowners' advocates for his sharply worded anti-bank opinions, discovered Baum's firm representing both sides of a lawsuit.[127] Baum reportedly came under "repeated criticism by state judges for his practices."[128]

The firm was a lightning rod for litigation as well, spurring a suit based upon fraud, state debt collection statutes, and racketeering.[129] Baum himself sued another attorney for libel, asking $6 million in damages, when that attorney published videos

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[119] Richard Wilner, *Liening on NY Homeowners—Chase and Law Firm Draw Scrutiny Over Tactics in Foreclosure Cases*, N.Y. POST, Feb. 28, 2010; Jonathan D. Epstein, *Buffalo Foreclosure Law Firm Faces Suit; Steven J. Baum Accused of Fraud*, BUFFALO NEWS, Oct. 17, 2010.

[120] *Id*.

[121] *Id*.

[122] Jonathan D. Epstein, *Baum's Practices Come Under Intense Scrutiny; Amid Accusations of Filing Shoddy Documents, Foreclosure Firm Faces Attorney General's Probe*, BUFFALO NEWS, Apr. 17, 2011.

[123] *See id.*; Gretchen Morgenson, *New York Subpoenas 2 Foreclosure-Related Firms*, N.Y. TIMES, Apr. 9, 2011.

[124] Wilner, *supra* note 119; Epstein, *supra* note 122; Morgenson, *supra* note 123.

[125] Wilner, *supra* note 119.

[126] Gretchen Morgenson, *Banks' Flawed Paperwork Throws Some Foreclosures Into Chaos*, N.Y. TIMES, Oct. 4, 2010.

[127] Michael Powell, *A 'Little Judge' Who Rejects Foreclosures, Brooklyn Style*, N.Y. TIMES, Aug. 31, 2009.

[128] Barry Meier, *Foreclosure Mess Draws in the Lawyers Who Handled Them*, N.Y. TIMES, Oct. 15, 2010.

[129] Epstein, *supra* note 122.

accusing Baum of filing false documents.[130] Baum's firm filed a malpractice lawsuit against another law firm for problems surrounding recordation of an assignment of mortgage, only to have an appellate court uphold a possible cause of action against him for contributory negligence.[131] One bankruptcy judge stated she "would no longer accept any material from" Baum's foreclosure processing company.[132]

While the lawsuits and harsh words from judges swirled, regulatory authorities, such as New York Attorney General Andrew Cuomo, had received complaints but did not confirm investigations.[133] It was not until April 2011 that the new State Attorney General, Eric Schneiderman, subpoenaed Baum and his document processing company, that scrutiny increased.[134] When the pressure came, Baum, like David Stern before him, claimed that people were making him a scapegoat.[135]

Despite his initial protests, Baum agreed to pay $2 million as part of a settlement of the Manhattan U.S. Attorney's investigation.[136] In the settlement, Baum finally admitted that his firm had made errors in the documents it had filed with courts around the state.[137] As part of the settlement, Baum was supposed to institute a training program for attorneys to ensure attorneys did not file pleadings without actual due diligence to ensure truthfulness and to preclude attorneys from signing assignments of mortgage as officers of MERS.[138] Consumer advocates predictably remarked that the settlement should have been for a larger amount.[139]

Unlike Stern, however, it was not Baum's shoddy and allegedly fraudulent practices that spelled doom for his law firm. Rather, it was a small column in the *New York Times*'s editorial section: columnist Joe Nocera published photos of Baum's 2010 Halloween party.[140] The leaked pictures show Baum employees

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[130] Jonathan D. Epstein, *Foreclosure Attorney Baum Sues Peer for Libel: Seeking $6 Million in Damages From Lask*, BUFFALO NEWS, Dec. 8, 2010. This suit was later dismissed. Jonathan D. Epstein, *Amherst Law Firm Agrees to Pay Fine; Settlement Involves Foreclosure Practices*, BUFFALO NEWS, Oct. 7, 2011.

[131] U.S. Bank, Nat'l Assoc. v. Stein, 2011 N.Y. Slip. Op. 01457, 81 A.D.3d 927, 917 N.Y.S.2d 669 (N.Y. App. Div. 2011).

[132] Morgenson, *supra* note 126.

[133] Epstein, *supra* note 122.

[134] Morgenson, *supra* note 126.

[135] Epstein, *supra* note 122.

[136] Denise M. Champagne, *Amherst Law Firm Steven J. Baum Reaches $2M Settlement*, DAILY REC. OF ROCHESTER, Oct. 6, 2011.

[137] *Id*.

[138] *See supra* note 130. In return for the settlement, Baum received a release from future liability under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Press Release, U.S. Dep't of Justice, Manhattan U.S. Attorney Announces Agreement with Mortgage Foreclosure Law Firm to Overhaul its Practices and Pay $2 Million Fine (Oct. 6, 2011), *available at* http://www.justice.gov/usao/nys/pressreleases/October11/stevenbaum pcagreementpr.pdf.

[139] Paul Tharp, *A $2M Wrist Slap Critics: Feds Went Easy on Baum Foreclosure Mill*, N.Y. POST, Oct. 7, 2011.

[140] Joe Nocera, *What the Costumes Reveal*, N.Y. TIMES, Oct. 28, 2011.

dressed like homeless people, complete with signs mocking typical homeowner defenses, such as "I was never served."[141] Other signs included "Will work for food," "[expletive] foreclosure, I'm current!" and "Foreclosure sale."[142] As a part of this tasteless theme, Baum's offices were apparently decorated to resemble a homeless squatters' camp, with a sign that demarcates "Baum Estates."[143]

Despite the photographic evidence, Baum's spokesperson initially denied the veracity of the story.[144] Days later, Baum himself apologized for the party, but still denied he had knowledge of it.[145] Prompted by the *New York Times* column, Congressman Elijah Cummings requested documents relating to Baum's practices and into the planning of the party.[146] As the national media attention escalated, it didn't take long for his clients to abandon his firm.

On November 15, 2011, just two weeks after the story about the 2010 Halloween party had been published, Freddie Mac announced it was "bar[ring] its loan servicers from referring any new foreclosure or bankruptcy cases in New York State to Steven J. Baum PC."[147] Fannie Mae soon joined and the end came swiftly for Steven J. Baum's law firm.[148] Baum announced the closure of the law firm in November 2011 and his document processing company laid off hundreds of employees effective February 2012.[149]

Thus, even after admitting filing incorrect documents in court, being investigated by the State attorney general, and settling claims with the U.S. Attorney, it appears that only a whirlwind of negative publicity could convince the GSEs to topple the king of New York foreclosures.

In the aftermath, the attorneys affected by the closure simply "diffused" into other New York foreclosure firms, just like David Stern's attorneys had in Florida.[150]

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[141] *Id*.

[142] *Id*.

[143] *Id*.

[144] *Id*.

[145] Carolyn Thompson, *N.Y. Foreclosure Firm: Sorry for Mocking Homeless*, ASSOC. PRESS, Nov. 2, 2011.

[146] Letter from Elijah E. Cummings, Ranking Member, Comm. On Oversight & Gov't Reform, U.S. House of Representatives, to Steven J. Baum, Fannie Mae & Freddie Mac (Nov. 4, 2011), *available at* http://www.scribd.com/doc/71633448/20111104EEC-to-Baum.

[147] Jonathan D. Epstein, *Freddie Mac Bans Baum From N.Y. Loan Service; Consumer Advocates Pleased by Decision*, BUFFALO NEWS, Nov. 15, 2011.

[148] Carolyn Thompson, *Firm that Held Foreclosure Costume Party Closing*, ASSOC. PRESS, Nov. 21, 2011.

[149] *Id*.; Matt Glynn, *Baum Woes Spread to Pillar, Resulting in 590 Local Layoffs*, BUFFALO NEWS, Dec. 1, 2011.

[150] *Steven J. Baum Closing Expected to Diffuse New York Foreclosure Business*, INT'L. BUS. TIMES NEWS, Nov. 21, 2011. One law firm reported that "a lot of resumes [were] flowing from his operation." Jonathan D. Epstein, *Downstate Law Firm Could Fill Baum Gap; Foreclosure Specialist Seeks Space, Workers*, BUFFALO NEWS, Dec. 8, 2011.

Several former attorneys from Baum's firm simply opened their own firm to perform the same kind of work.[151] Most of its hires were former Baum attorneys.[152]

The final act for Baum was an agreement with State Attorney General Schneiderman for a $4 million settlement stemming from Baum's misconduct.[153] Schneiderman revealed some of the more shocking instances of Baum's misconduct—which consumer advocates had suspected for years—including that:

> "The Baum Firm Routinely brought foreclosure proceedings without taking appropriate steps to verify the accuracy of the allegations . . . ;"
> "Complaints were prepared in an assembly-line fashion;"
> "Attorneys routinely signed complaint verifications [. . .] without reviewing the contents of the complaints or the underlying documentation;"
> "The Baum Firm also failed to properly notarize documents signed by its attorneys;" and
> "The Baum Firm also repeatedly failed to file" a form required to be attached to all initial foreclosure lawsuit documents. The failure to file this form prevents the scheduling of settlement conferences that encourage settlement.[154]

As part of the settlement, Baum and his managing partner also agreed to refrain from representing lenders in new foreclosure cases for two years.[155] Given that Baum had sold his document processing company to private investors for $50 million, it is unclear how badly Baum fared considering the scale of the allegations against him. He, like Stern, has yet to receive disciplinary action from the state bar association.

C. Florida's Other Foreclosure Kingpins

While Stern and Baum are the poster children for everything that is wrong with the high volume foreclosure practice model, other enormous firms in Florida, all investigated by the State Attorney General, follow close behind. The majority of these firms are still practicing without any repercussions for the transgressions discussed below.

1. Ben-Ezra & Katz

In a February 2011 announcement, Fannie Mae eliminated this large Florida firm from its attorney network, effectively barring the firm from representation on

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[151] Jonathan D. Epstein, *2 Ex-Baum Attorneys Open Law Firm in Amherst*, BUFFALO NEWS, Feb. 10, 2012.

[152] *Id*.

[153] Press Release, Eric T. Schneiderman, *supra* note 12. The agreement also covered the document processing company Baum had sold earlier as well as his law firm's managing partner. *Id.*

[154] *Id*.

[155] *Id.*

existing Fannie Mae owned loan cases and any future cases.[156] The firm, which had handled 18,000 cases and employed six hundred people,[157] admitted that it had "proactively" alerted Fannie Mae about documentation problems after hiring an outside law firm to conduct an audit in light of the national robo-signing news.[158] One example of Ben-Ezra's conduct was filing a count stating that the subject note and mortgage were lost, then filing those very documents months later.[159] Worse, when the note and mortgage were filed, they pertained to an entirely different property altogether.[160]

Layoffs soon followed the Fannie Mae termination, and the Florida Attorney General announced an investigation into the firm.[161] Just over two months later, Ben-Ezra & Katz closed its foreclosure business.[162]

2. Shapiro & Fishman

Another firm investigated by the Florida Attorney General, Shapiro & Fishman, is one of Florida's largest foreclosure law firms.[163] One Florida judge found the firm guilty of "'knowing deception'" when its attorneys filed an action on behalf of Washington Mutual and substituted in JPMorgan Chase, when Fannie Mae was the actual owner during the entire pendency of the case.[164] Worse, the firm apparently filed several motions signed by an attorney who had already left the firm.[165] Part of the larger "Shapiro Attorneys Network," the firm's related New Jersey office was found guilty of similarly troubling practices. This included the filing of 250 pre-signed motions despite the signing attorney no longer working at the firm.[166] The

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[156] Press Release & Notice, Fannie Mae, Termination of Relationship with the Ben-Ezra & Katz Law Firm (Feb. 10, 2011), *available at* https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2011/ntce021011.pdf.

[157] Kimberly Miller & Christine Stapleton, *Lawyer Held in Contempt Over 'Fraud' in Foreclosure Filing*, PALM BEACH POST, Feb. 12, 2011.

[158] *Ben-Ezra & Katz, P.A. Issues Statement on Fannie Mae's Termination of Relationship With Firm*, BUSINESS WIRE.COM (Feb. 10, 2011), http://www.bloomberg.com/apps/news?pid=conewsstory&tkr=FNM:US&sid=aAXH.IvuKDEA. This included attorneys formerly employed by the disgraced Stern firm. Stapleton & Miller, *supra* note 66.

[159] Miller & Stapleton, *supra* note 157.

[160] *Id*.

[161] Diane Lade, *Foreclosure Law Firm Lays Off Nearly Half of its Staff, After Losing Fannie Mae*, S. FLA. SUN-SENTINEL, Feb. 15, 2011; Kimberly Miller, *Another South Florida Foreclosure Law Firm Faces State Scrutiny*, PALM BEACH POST, Feb. 22, 2011; Kimberly Miller, *Ending Foreclosure Business, Ben-Ezra Lays Off 154*, PALM BEACH POST, Apr. 29, 2011 [hereinafter Miller, *Ending Foreclosure Business*].

[162] Miller, *Ending Foreclosure Business*, *supra* note 161.

[163] Kris Hundley, *Foreclosure: Defending the Lenders*, TAMPA BAY TIMES, Mar. 18, 2011. Shapiro was yet another firm who hired former Stern attorneys. Stapleton & Miller, *supra* note 66.

[164] Hundley, *supra* note 163.

[165] Susan Taylor Martin*, Banks Gum Up Foreclosures*, TAMPA BAY TIMES, Sept. 7, 2011.

[166] Gretchen Morgenson & Jonathan Glater, *Foreclosure Machine Thrives on Woes*, N.Y TIMES, Mar. 30, 2008.

Florida Attorney General's investigation stalled against the firm, and apparently no Shapiro & Fishman attorney has faced disciplinary action by the Florida Bar.

3. Marshall C. Watson

At another headline-making Florida firm being investigated by the Florida Attorney General, an attorney at the Law Offices of Marshall C. Watson said she handled between five and six thousand files at any given time.[167] Further, the attorney testified that it was common practice to sign documents without notaries present, and then to allow notaries to stamp those documents later as if they had been signed in front of a notary.[168] As with Stern and Baum, rumors circulated that Watson attorneys signed documents without reviewing them.[169] After Freddie Mac stopped referring cases to the firm,[170] the firm paid $2 million to settle the attorney general's investigation, making it the only high volume foreclosure firm in Florida to settle.[171] While judges were not reluctant to criticize Watson's tactics and malfeasance,[172] in a shocking twist, the chief judge of Broward County left the bench to join Marshall Watson while the firm remained under investigation by the state attorney general.[173] It was later revealed that one of the attorneys in the state attorney general's Economic Crimes Division went to work for Watson, again while the firm was still under investigation.[174]

4. Florida Default Law Group

Florida Default Law Group (FDLG) has long been suspected to practice "using an assembly-line model."[175] One former attorney reported a ratio of six to ten

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[167] Deposition of Jessica Cabrera at 11, In Re: Investigation of Law Offices of Marshall Watson, AG#L10-3-1147 (Fla. Cir. Ct. Sep. 23, 2010) [hereinafter Cabrera Dep.], *available at* http://myfloridalegal.com/webfiles.nsf/WF/JFAO-8ACMYW/$file/JessicaCabrereaDeposition.pdf.

[168] *Id*. at 14-15.

[169] *Id*. at 40-41.

[170] Kimberly Miller, *Broward Judge Joining Law Firm; Defense Attorneys Are Puzzled by The Move to a So-Called 'Foreclosure Mill'*, PALM BEACH POST, May 19, 2011.

[171] Jessica Karmasek, *Bondi, Foreclosure Firm Settles for $2M*, LEGAL NEWS LINE (Mar. 28, 2011), http://www.legalnewsline.com/news/231909-bondi-foreclosure-firm-settle-for-2m; Press Release, Pam Bondi, Attorney Gen., Fla. Office of the Attorney Gen. Florida Attorney General Pam Bondi Pam Bondi Settles Investigation Against One of Florida's Largest Foreclosure Firms (Mar. 25, 2011), *available at* http://www. myfloridalegal.com/newsrel.nsf/ newsreleases/478149A91AA0E2528525785E006C1EED.

[172] Order Granting Defendants' Motion To Dismiss Second Amended Complaint with Prejudice at 2, M & T Bank v. Smith, Case No. CA09-0418 (Fla. Cir. Ct. June 10, 2010) (holding that the firm had "misled" a judge "from the beginning" of a lawsuit resulting in dismissal with prejudice).

[173] Miller, *supra* note 170.

[174] Kimberly Miller, *Probed Firm Hires Ex-State Official; Florida's Former economic Crimes Division Director Takes Job at Foreclosure Firm Office Was Investigating*, PALM BEACH POST, Aug. 10, 2011, at 6B.

[175] Michael Sasso, *Law Firm Gorges on Home Defaults*, TAMPA TRIB., Jan. 3, 2010, at 1.

paralegals for every attorney even before the housing crisis.[176] One federal judge chastised the firm, stating that the firm "'churn[ed] out unrefined and unexamined form pleadings, instead of producing and filing carefully considered legal papers."[177] Even the managing partner of the law firm, Ronald Wolfe, admitted he did not look at any documents to verify the truthfulness of assignments of mortgage before he signed them.[178]

Beyond troubling filings, FDLG also prompted complaints regarding its settlement practices. One such complaint concerned an offer of "cash-for-keys," an offer whereby a homeowner agrees to vacate and not contest a foreclosure in exchange for a small cash settlement.[179] FDLG was accused of offering homeowners settlement money only to renege on its deals.[180] Further, FDLG was accused of forcing employees to work without recording hours, in a "typical unpaid overtime" case.[181] FDLG faced Federal Debt Collection Practices Act claims as well as other reprobation from various Florida state judges.[182]

5. Butler & Hosch

Another Florida law firm, Butler & Hosch, found itself in hot water for "filing 67 faulty motions to remove borrowers from their homes."[183] A North Carolina bankruptcy judge's tersely worded order reported a number of inappropriate practices, including: (1) improper executions of affidavits; (2) nonappearance at a show cause hearing; (3) attorneys admitting "they did not always read documents bearing their signatures that were later filed with the Court,"; (4) improper notarization and; (5) numerous other failures to appear at scheduled hearings.[184]

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[176] *Id*.

[177] *Id*.

[178] *See, e.g.*, Deposition of Ronald Wolfe, Citibank v. Barbaro, No. 50 2008 CA 030498 XXXX MB (Fla. Cir. Ct. Aug. 26, 2010), *available at* http://www.scribd.com/doc/41696779/Full-Deposition-of-Florida-Default-Law-Group-Managing-Partner-Ronald-Wolfe.

[179] George Spencer, *9 Investigates Fake Foreclosure Money*, WFTV, (May 10, 2012), http://www.wftv.com/news/news/local/9-investigates-fake-foreclosure-money/nN2Z7/.

[180] *Id.*

[181] *Employee: 'Foreclosure Mill' Forced Her to Work Off Clock*, TAMPA BAY TIMES ONLINE, Jan. 12, 2011, *available at* http://www2.tbo.com/business/breaking-news-business/2011/jan/12/ employee-foreclosure-mill-force-her-to-work-off-cl-ar-15604/.

[182] Complaint, Diaz v. Fla. Default Law Grp., P.L., No. 3:09-cv-524-J-32MCR (M.D. Fla. June. 11, 2009), *available at* http://thetruthaboutloanmodification. files.wordpress.com/ 2009/09/florida-default-class-action-complaint.pdf*;* Order on Defendants' Motion to Vacate Order to Substitute Party Plaintiff and Motion to Dismiss Action with Prejudice at 2, U.S. Bank Nat'l Assoc. v. McLeod, No. CA08-2124 (Fla. Cir. Ct. May 7, 2010) (holding that "the Court was misled by the Plaintiff's Motion").

[183] Morgenson & Glater, *supra* note 166.

[184] Order for Sanctions at 2-5, In re: Deborah Joann Ulmer & Isaiah Ulmer, No. 05-45096 (Bk. D. S.C. Jan. 23, 2007), *available at* http://www.lsnj.org/NewsAnnouncements/ Foreclosure/materials/EXHIBITX.pdf.

6. Smith, Hiatt & Diaz

The firm of Smith, Hiatt & Diaz has also received recrimination for faulty practices. One Florida judge noted that the firm "does not make diligent efforts to notify other parties of cancellations" of hearings and that it repeatedly missed scheduled hearings without canceling them.[185] The judge fined the firm $49,000.[186] Another judge, after witnessing the firm move to cancel a foreclosure sale in violation of a court order, stated that a principal of the firm, Roy Diaz, was "'either totally incompetent or unaware what of what the law is.'"[187] One interesting mishap that befell Smith, Hiatt & Diaz occurred when its attorney attached internal emails to an affidavit that revealed that the Plaintiff was not the owner of the loan being foreclosed.[188] Another gaffe included Diaz stating under oath that he only recalled signing six assignments of mortgages, and then refusing to answer questions when confronted with a stack of dozens of assignments with his signature on them.[189]

D. Misconduct in Other States

1. Maryland and Virginia

While Florida and New York provided much of the news for reports on attorney misconduct, other states' attorneys managed to earn negative attention as well. Foreclosure law firms in Maryland and Virginia admitted to committing serious misconduct. Attorneys at Covahey, Boozer, Devan & Dore PA and at Bierman, Geesing, Ward & Wood admitted that other attorneys had signed their signatures in documents submitted to court.[190] Several notaries had their licenses revoked and the Maryland Court of Appeals adopted a rule allowing courts to appoint independent

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[185] Order Adjudicating Plaintiff's Attorney's in Contempt of Court at 2, HSBC Bank USA v. De Freitas, No. 2007-CA-007993 (Fla. Cir. Ct. Sept. 2, 2010), *available at* http://floridaforeclosurefraud.com/wp-content/uploads/2010/09/ORDER-HSBC-v-ANTONIO-DEFREITAS.pdf.

[186] *Id.* at 9.

[187] Susan Taylor Martin, *Banks Gum Up Foreclosures,* TAMPA BAY TIMES, Sept. 7, 2011, at 1A.

[188] Plaintiff's Motion to Purge Amended Affidavit of Indebtedness from the Record, HSBC Bank USA, Nat'l Assoc. v. Lopez, No. 50 2009 CA 030403 XXXX MB (Fla. Cir. Ct. 2010), *available at* http://www.scribd.com/doc/91240609/Motion-to-Purge-LPS*; see also* Exhibit to Plaintiff's Motion to Purge Amended Affidavit of Indebtedness from the Record, Nat'l Assoc. v. Lopez, No. 50 2009 CA 030403 XXX MB (Fla. Cir. Ct. 2010), *available at* http://www.scribd.com/doc/91040648/LPS-Internal-Emails-Pg-1-Foreclosed-in-Wrong-Party-Name (part I) http://www.scribd.com/doc/91040652/LPS-Internal-Emails-Pg-2-Foreclosed-in-Wrong-Party-Name (part II) ("The Plaintiff on the Complaint/AOI and our system of record do not match.").

[189] Deposition of Roy Diaz, Bank of N.Y. Mellon v. Powers, No. 50 2010 CA 013920 XXXX (Fla. Cir. Ct. Mar. 23, 2011), *available at* http://stopforeclosurefraud.com/2011/04/26/full-deposition-transcript-of-roy-diaz-shareholder-of-smith-hiatt-diaz-p-a-law-firm/.

[190] Steve Lash, *Titles get Tougher to Insure*, DAILY REC., Oct. 18, 2010. Other Maryland firms were implicated in similar practices. Brendan Kearney, *More Foreclosure Filings Under Scrutiny in Baltimore*, DAILY REC. May 5, 2011.

attorneys to review foreclosure documents for irregularities.[191] Meanwhile, at the Virginia firm of Shapiro & Burson, attorneys admitted to the same practices, supposedly to avoid the "sloppy" practice of crossing out another attorney's name below a signature line.[192] Show cause hearings were held in several Maryland counties regarding the issue.[193] At least one judge, however, found that the Shapiro firm's false signatures did not merit sanctions.[194]

2. Pennsylvania, Connecticut, Texas and California

The deplorable scale of attorney malfeasance unfortunately does not end in the aforementioned states. In Pennsylvania, for instance, one attorney admitted that "many documents his firm submitted to court with his signature" were signed by staff, and that complaints were submitted to court "without an attorney seeing them."[195] The State Attorney General of Connecticut investigated numerous consumer complaints of improper service of foreclosure notices.[196] A Texas judge fined a foreclosure law firm $75,000 for using inaccurate information about alleged defaults.[197] California's bar suspended an attorney for giving insufficient notice to tenants prior to eviction.[198] Accordingly, while this Article has sought to explore case studies of the most prominent examples of attorney misconduct, even a small sampling of news during the height of the housing crisis reveals that it is altogether likely that such misconduct is taking place or has taken place in most, if not all, states.

Furthermore, while this Article primarily focuses on counsel for banks and servicers, homeowners' attorneys have also been found using questionable tactics. One Florida attorney filed hundreds of repetitive motions to disqualify a judge in what an appellate court ruled was an improper attempt to "frustrate the efficient

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[191] Steve Lash, *Maryland Court of Appeals Adopts New Foreclosure Rule*, DAILY REC., Oct. 19, 2010.

[192] Brandon Kearney, *Lawyers Questioned in Baltimore City Circuit Court on Foreclosure Signing Practices*, DAILY REC., May 10, 2011.

[193] *Id*.

[194] Danielle Ulman, *Home Sale Ratified Despite Faulty Affidavits, Rules Baltimore County Judge*, DAILY REC., Aug. 21, 2011.

[195] Sasha Chavkin, *False Attorney Signatures Cast New Doubts on Foreclosures*, PROPUBLICA (Dec. 13, 2010, 2:49 P.M.), http://www.propublica.org/blog/item/false-attorney-signatures-cast-new-doubts-on-foreclosures.

[196] Yves Smith, *Foxes Now Minding Very Big Henhouse: Foreclosure Fraud Investigations Use Law Firm Deeply Involved with Major Servicer*, NAKED CAPITALISM (Nov. 21, 2010, 12:12 A.M.), http://www.nakedcapitalism.com/2010/11/foxes-now-minding-very-big-henhouse-foreclosure-fraud-investigations-use-law-firm-deeply-involved-with-major-servicer.html.

[197] Morgenson & Glater, *supra* note 166.

[198] Press Release, Tenants Together, California Bar Suspends Attorney for Illegal Foreclosure Eviction of Tenants (Sept. 19, 2011) (California's Statewide Organization for Renters' Rights), *available at* http://www.tenantstogether.org/article.php?id=2170.

function of the foreclosure division."[199] California attorneys faced discipline over mailers they sent that were made to appear like official loan modification offers from lenders in order to induce potential clients into contacting the attorneys.[200] Other California attorneys "rented out" their bar licenses to allow loan modification operations to appear as if they were practicing as law firms.[201]

One of the more famous California cases involved a homeowners' attorney instructing clients to simply break into their former homes and move back in.[202] Ample evidence suggests that while the larger number of instances of improper conduct was done by plaintiff's attorneys, (by virtue of the fact that most homeowners do not retain an attorney to contest foreclosure),[203] homeowners' advocates have also been guilty of misconduct.

Therefore, the scope of attorney misconduct in foreclosure litigation is geographically dispersed and is factually troubling. Attorneys have falsified documents, signed other attorneys' signatures, filed documents signed by attorneys no longer working at their firm, ignored service of process requirements, ignored tenant notice requirements, and showed an utter lack of professionalism in obeying court orders.

It is difficult to point to a more numerically significant and geographically disparate example of widespread attorney misconduct than the current crisis. In popular press accounts, attorney misconduct often becomes grouped together with banks and lenders' robo-signing issues. As this Article makes clear, however, attorneys committed their own violations and improprieties, separate and distinct from lenders' improper verification procedures. Given the scale and disturbing nature of these revelations, the Article will next more fully explore the various responses to attorney misconduct.

IV. REGULATORY RESPONSES TO ATTORNEY MISCONDUCT

A. State Bar Associations

The various bar associations dealing with attorney misconduct complaints in foreclosure cases have faced an overwhelming task. The California State Bar

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[199] Nudel v. Flagstar Bank, FSB, 52 So. 3d 692, 695 (Fla. Dist. Ct. App. 2010) ("[The attorney]'s repetitive attempts at disqualification in these cases appear designed, not to ensure that the proceedings against their clients are presided over by a neutral and fair tribunal, but to achieve a strategic advantage [. . .] this tactic is an improper use of the disqualification procedure.").

[200] *Attorney Phillip Kramer & Other Attorneys Face Discipline in Loan Modification Scam*, PIGGY BANK BLOG (Apr. 13, 2012), http://piggybankblog.com/2012/04/13/california-state-bar-takes-action-against-attorney-phillip-kramer-and-others/.

[201] Joanna Lin, *Real Estate, Attorney Scams Rise Amid Foreclosures*, CAL. WATCH (Aug. 10, 2010), http://californiawatch.org/dailyreport/real-estate-attorney-scams-rise-amid-foreclosures-3765.

[202] Kerry Curry, *Disbarred Vigilante Attorney, Homeowner Arraigned in Foreclosure Break-In*, HOUSINGWIRE (June 1, 2011) http://www.housingwire.com/news/disbarred-vigilante-attorney-homeowner-arraigned-foreclosure-break.

[203] *See, e.g.*, Melanca Clark and Maggie Barron, *Foreclosures: A Crisis in Legal Representation*, BRENNAN CTR. FOR JUSTICE (2009), *available at* http://brennan.3cdn.net/a5bf8a685cd0885f72_s8m6bevkx.pdf.

investigated over 2,000 complaints of foreclosure fraud.[204] The Florida Bar, surprisingly, only announced 222 open complaints in March 2011, and admitted that as of January 2011, not a single attorney had been disciplined—"even lawyers who admitted to breaking ethical rules."[205] The former state bar president tried to show her resolution by sending a letter to judges asking them to report attorneys who have broken ethical rules, although this is already required by the Florida rules.[206] But the Bar's "director of lawyer regulation" admits that the foreclosure crisis hampered the Bar's ability to monitor lawyers.[207] The case studies of David Stern and Steven Baum examined in this Article show that effective disciplinary deterrence was simply not effective to prevent major systemic attorney misconduct. Furthermore, very few attorneys have apparently been disciplined even after misconduct such as that explored in this Article has come to light.

B. State Courts

State court judges have attempted to grapple with attorney misconduct in foreclosure litigation. New York's highest court, for example, implemented a requirement that mandated attorneys to file "an affirmation certifying that counsel has taken reasonable steps—including inquiry to banks and lenders and careful review of the papers filed in the case—to verify the accuracy of documents filed in support of residential foreclosures."[208] As revelations emerged throughout the robo-signing scandal, it became clear that many bank and servicer employees were not just signing at excessive speed, but that even if they had read the documents, they would not have understood the import of what they were signing.[209] Many servicer and document processing employees have limited knowledge about the most basic facets of legal terminology.[210] Thus, seeking the opinion of low-level bank employees about the veracity of legal claims in foreclosure complaints may not add significant substantive value.

Regardless of the efficacy of such a requirement, the additional step apparently sent tremors down the collective spines of foreclosure plaintiffs' attorneys. Many

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[204] Lin, *supra* note 201.

[205] Kimberly Miller, *Number of Florida Lawyers Under Investigation for Foreclosure-Related Wrongdoing Grows*, PALM BEACH POST, Mar. 23, 2011; Todd Ruger, *Foreclosure Lawyers' Misdeeds Ignored in Florida?*, HERALD TRIB., Jan. 18, 2011, at A1.

[206] Kimberly Miller, *Bar Probing Foreclosure Misconduct Allegations*, PALM BEACH POST, Oct. 26, 2010.

[207] Ruger, *supra* note 205.

[208] Press Release, N.Y. State Unified Court Sys., New York Courts First in Country to Institute Filing Requirement to Preserve Integrity of Foreclosure Process (Oct. 20, 2010), *available at* http://www.nysba.org/AM/Template.cfm?Section=Home&ContentID=43725&Template=/CM/ContentDisplay.cfm.

[209] Deposition of Beth Cottrell at 10, Chase Home Fin. v. Koren, No. 50 2008-CA-016857 (Fla. Cir. Ct. May 17, 2010), *available at* http://www.scribd.com/doc/32080465/Full-Deposition-of-Beth-Cottrell-Part-1 (admitting lack of personal knowledge of items found on affidavit in support of final foreclosure judgment).

[210] *Id*. at 40-41 (failure to distinguish between holding notes under the Uniform Commercial Code and ownership).

foreclosure attorneys simply refused to sign and file the affirmation, leaving cases in limbo.[211] One study found that New York attorneys' reluctance to subject themselves to the new affirmation requirement meant that homeowners' opportunity for mediation was delayed or eliminated.[212]

Florida, in contrast, instituted a requirement that foreclosure complaints be verified by banks and servicers' employees, rather than attorneys.[213] The Florida Supreme Court instituted this change prior to the robo-signing scandal emerging in the national press, and has not imposed any additional requirements on attorneys despite the salacious revelations against Florida law firms. Apart from these concerted statewide efforts in New York and Florida, therefore, judicial response to attorney misconduct in foreclosure litigation has largely been on an ad hoc and individual basis.

C. The Government Sponsored Entities (GSEs)

Fannie Mae received much disapprobation for their failure to remedy attorney misconduct years before the robo-signing scandal broke.[214] Despite receiving notices about attorney malfeasance, Fannie Mae continued to retain attorneys who had been sanctioned by courts and only removed firms from their retained attorney network in the most serious cases.[215] For a time, Fannie Mae even continued to employ the Marshall Watson firm Freddie Mac had fired and that had paid $2 million to the Florida Attorney General's office in response to misconduct claims.[216] It is notable that even after attorney misconduct and robo-signing made national headlines, the interim head of the Federal Housing Finance Agency (FHFA) seemed to ascribe attorney misconduct as being due to attorneys becoming "strained by the volume of foreclosures."[217] The FHFA failed to acknowledge that knowing and willful attorney misconduct had already been revealed, and failed to censure the GSE's for failure to monitor the attorneys it had permitted servicers to retain.

Eventually, after years of maintaining a list of acceptable law firms for servicers to retain for foreclosure litigation, Fannie Mae and Freddie Mac announced they would allow servicers to choose their own outside counsel.[218] The FHFA's Office of

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[211] *See* Joe Nocera, *Baum Weighs in After Uproar*, N.Y. TIMES, Nov. 18, 2011, at A21.

[212] FORECLOSURE PREVENTION PROJECT, MFY LEGAL SERVICES, INC., JUSTICE DECEIVED: HOW LARGE FORECLOSURE FIRMS SUBVERT STATE REGULATIONS PROTECTING HOMEOWNERS 15 (July 2011).

[213] In Re: Amendments to The Fla. Rules of Civil Procedure, 44 So. 3d 555, 556-60 (Fla. 2010).

[214] Gretchen Morgenson, *A Tornado Warning, Unheeded*, N.Y. TIMES, Feb. 5, 2012, at BU1.

[215] *Id*.

[216] Kimberly Miller, *Fannie Mae Sticking with Fired Florida Law Firm*, PALM BEACH POST, Oct. 6, 2011.

[217] *Foreclosed Justice: Causes and Effects of the Foreclosure Crisis: Hearing Before the H. Comm. on the Judiciary*, 111th Cong. 7 (2010) (statement of Edward J. DeMarco, Acting Director, Federal Housing Finance Agency).

[218] Jenna Greene, *Fannie and Freddie will let Mortgage Servicers Hire Their Own Attorneys*, NAT'L L.J., Oct. 19, 2011; Press Release, Fed. Hous. Fin. Agency, FHFA Directs

Inspector General (OIG) later recommended that the GSEs improve their procedures on examination of legal service providers' conduct.[219] At this point, it is not at all clear that the GSEs have completely distanced themselves from, or precluded servicers from hiring, firms under investigation by state authorities or firms that have had previous instances of improper conduct revealed. Specifically, the FHFA OIG reported to Congress that its recommendations to clean up many of the default legal service provider problems are still in the process of being implemented.[220]

D. State Attorneys General

State attorneys general have largely ignored problems with foreclosure law firms. As discussed in Part III, the Florida Attorney General investigated several high volume foreclosure firms,[221] but this investigation eventually faltered.[222] California sporadically investigated law firms in connection with protecting tenants in foreclosed properties[223] and took action against loan modification scams,[224] but has apparently not initiated any systemic review of the high volume foreclosure firm phenomenon. Similarly, in New York it was the U.S. Attorney for Manhattan who first investigated the practices of Stephen Baum, and not the New York State Attorney General.[225] It appears that most state attorneys general are presently content with the results gleaned from the fifty state settlement in connection with robo-signing and have decided not to investigate foreclosure attorneys separately.

E. Legislators

State legislators have tended to focus on the foreclosure crisis as a whole, rather than specifically at attorney misconduct. Typical attempts to remedy shortcomings in the process include instituting mediation regimes or increasing notice periods to

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Fannie Mae and Freddie Mac to Adopt Uniform Improvements to Foreclosure Attorney Networks (Oct. 18, 2011), *available at* http://www.fhfa.gov/webfiles/22718/RANDCP101811.pdf.

[219] OFFICE OF THE INSPECTOR GEN., FED. HOUS. FIN. AGENCY, FHFA'S OVERSIGHT OF FANNIE MAE'S DEFAULT-RELATED LEGAL SERVICES (Sept. 30, 2011).

[220] OFFICE OF INSPECTOR GEN., FED. HOUS. FIN. AGENCY, SEMIANNUAL REPORT TO THE CONGRESS 59, 60 (Apr. 30, 2012).

[221] *See, e.g.*, Miller, *supra* note 70.

[222] Kimberly Miller, *Foreclosure Mill Probe Ends in Florida, Bondi to Seek Alternatives*, PALM BEACH POST (Feb. 2, 2012), http://blogs.palmbeachpost.com/realtime/2012/02/02/bondis-foreclosure-mill-request-denied-investigation-stalled/.

[223] *See, e.g.*, Gabe Treves, *Jerry Brown Investigates Banks' Treatment of Foreclosure Tenants*, BEYONDCHRON (July 13, 2010), http://www.beyondchron.org/news/index.php?itemid=8315.

[224] Press Release, Office of Special Insp. Gen. for the Troubled Asset Relief Program, 3 Attorneys Charged in California Loan Modification Scam (Mar. 8, 2012).

[225] Jonathan D. Epstein, *Amherst Law Firm Agrees to Pay Fine; Settlement Involves Foreclosure Practices*, BUFFALO NEWS, Oct. 7, 2011.

borrowers before sale.[226] But even in states where legislators enacted mediation schemes, attorneys did not always force their clients to comply with mediation procedures designed to gather borrowers and lenders together.[227]

After the worst revelations of robo-signing emerged, some state legislators honed in their attention towards false filing of documents in foreclosure actions.[228] The Nevada Legislature, for example, made it a felony for a person to create false documents for the purpose of creating a claim against property.[229] While this remedy was again aimed at principals rather than attorneys, the effect of the law was to slow down the foreclosure process as banks, lenders, and their attorneys proceeded more cautiously.[230]

Nonetheless, as with state attorneys general, legislatures have largely ignored the problem of attorney misconduct in foreclosure litigation. In light of the relative paucity of regulatory responses examined herein, the Article will next proceed to examine the root causes of the foreclosure attorney abuses to more aptly inform policymakers and commentators on preventing similar problems in the future.

V. WHY THE MISCONDUCT OCCURRED

The scale of attorney malfeasance in connection with the foreclosure crisis is enormous, as discussed in this Article. Whether attorneys knowingly filed false documents or simply failed to question documents they had reason to suspect, a large numbers of attorneys were complicit in the filing of tainted documentation throughout the nation. Given the scale of the problem, this Article next asks how and why so many problems emerged. This section compares and contrasts large firms typically examined in academic studies of attorney ethics to the newly developed high volume foreclosure firms discussed herein. The section concludes with examinations of several causes of the severe lapse in attorney ethics, including the GSEs' race for speed in processing foreclosures and the unique structure of high volume foreclosure firms.

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[226] *See* Dustin A. Zacks, *The Grand Bargain: Pro-Borrower Responses to The Housing Crisis and Implications for Future Lending and Homeownership*, 57 LOY. L. REV. 541, 560 (2012).

[227] *See generally id*. *See also* Philip Olson & Keith Tierney, *Foreclosure Mediation in Nevada: Why Hasn't it Worked?*, 20 NEV. LAW. 10, 11-12 (Mar. 2012) (noting that mediators found six thousand cases where the lender or servicer did not comply with the statutory requirements for mediation).

[228] *See, e.g.*, A.B. 284, 2011 ASSEMB. § 13 (Nev. 2011).

[229] *Id*. at § 14; *see* NEV. REV. STAT. § 205.372 (2011).

[230] Nick Timiraos, *Nevada Foreclosure Filings Dry Up After 'Robo-Signing' Law*, WALL ST. J. REAL ESTATE BLOG (Nov. 7, 2011), http://blogs.wsj.com/developments/2011/11/07/nevada-foreclosure-filings-dry-up-after-robo-signing-law/?mod=google_news_blog.

A. Differences from Traditionally Examined Firms

1. High Volume Foreclosure Firms are Not "Tournament" Firms

While the foreclosure crisis has illuminated countless new areas of inquiry for scholars,[231] the study of high volume foreclosure law firms has previously escaped meaningful examination. Most academic studies of attorney ethics focus on attorneys in large traditional or "elite" firms.[232] The dominant strain of discussion of ethical dilemmas in practice stems from the basic impression of such firms: such firms are distinguished by their high selectivity in hiring, their prestigious clientele, and their competitive "tournament" to achieve partner status.[233] Academic studies note these firms' unceasing drive to increase profitability, which can result in higher and higher pressures on associates to bill more hours. The tournament to reach partner is a long, stressful, and mystifying journey that is a paramount concern to many associates in such firms.[234]

In contrast to such traditional large firms, high volume foreclosure firms were not built for increasing billable hours or for attempting to make partner. Rather, due to nonlitigated cases being mainly paid on a flat fee schedule,[235] foreclosure firms seem more like factories and mills than large firms traditionally explored by academia. These large foreclosure firms were built for speed and efficiency, not for billable hours. One law firm advertised for a supervisor position that made it apparent that "[t]he firm appears to be working around the clock—the listing specifies that the evening shift runs from '1:30 P.M. to 10pm.'"[236]

Furthermore, large foreclosure firms do not derive revenue on the backs of younger associates' billing hours. Rather, lower paid staff is employed to drive efficiency higher and costs lower. High ratios of staff to partners were the hallmark of foreclosure mills.[237] One commentator stated a typical ratio might be ninety to

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[231] For example, scholars had written less than five substantive articles on Mortgage Electronic Registration Systems, Inc. (MERS) prior to the foreclosure crisis. Now, MERS is a popular research area for scholars. *See, e.g.*, John P. Hunt, Richard Stanton, & Nancy Wallace, *All in One Basket: The Bankruptcy Risk of a National Agent-Based Mortgage Recording System*, 46 U.C. DAVIS L. REV. 1 n.17 (2012).

[232] *See, e.g.*, Bernard A. Burke & David McGowan, *Big but Brittle: Economic Perspectives on the Future of the Law Firm in the New Economy*, 2011 COLUM. BUS. L. REV. 1, 4 (2011); Marc Galanter & William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867 (2008).

[233] *See generally* Galanter & Henderson, *supra* note 232.

[234] *Id*.

[235] *See, e.g.*, Cabrera Dep., *supra* note 167, at 38 (noting that most cases were litigated for a flat fee of $1,200.00).

[236] Marian Wang, *Want to Earn $10-12 an Hour? Be a 'Foreclosure Department Supervisor'*, PROPUBLICA (Nov. 5, 2010), http://www.propublica.org/blog/item/want-to-earn-10-12-an-hour-be-a-foreclosure-department-supervisor.

[237] Smith, *supra* note 196.

one hundred paralegals for every partner.[238] Similarly, one former attorney reported "Stern's practice was driven by paralegals, who prepared most of the paperwork."[239]

Thus, the typical picture of large law firms one may be familiar with from previous studies simply does not apply here. Large foreclosure firms are not centers of prized graduates learning their craft from experienced and successful veterans while struggling to bill copious hours. Rather, one Buffalo newspaper more aptly described the species of law firm examined by this Article: "an assembly line operation."[240] Foreclosure firm associates were trained for relentless speed and efficiency rather than business generation, hourly goals, and a tournament to achieve partner status.

2. Lack of "Firm-Specific Capital"

Burke and McGowan, citing an earlier study, note that the absence of "firm-specific capital," including a firm's reputation for ethical conduct and quality work, contributes to instability in a number of ways.[241] Attorneys are constrained from leaving large traditional firms in which the firm's built-in capital, such as a firm's stable relationship with a client, could not be taken with them.[242] Yet this feature of firms traditionally examined in academia is largely absent in foreclosure volume firms.

Most young foreclosure attorneys, unmotivated by the traditional "tournament," are likely to have nearly identical work from one foreclosure firm to another. Indeed, the same banks and servicers routinely hire several different foreclosure firms for their different cases. Attorneys, therefore, would not be reluctant to jump from one firm to another for fear of lack of business or lack of expertise. This instability may translate into more casual ethical decision-making due to a significant lack of concern for the reputation of an individual firm. After all, even when the unthinkable occurs and a firm closes after sultry revelations are brought forth, most foreclosure attorneys will be able to find work at similar firms.[243] Attorneys who do not value firm specific capital will be less likely to make decisions based on how those decisions would affect the reputation of their firm. Therefore, the malfeasance of attorneys at foreclosure firms may stem in part from a lack of firm specific capital.

3. Lack of Role Modeling/Mentoring

Another offshoot of this lack of firm-specific capital is the disinclination to monitor and mentor young attorneys. Attorneys who have years invested in their

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[238] *Id*.

[239] Stapleton & Miller, *supra* note 66; *see also* Scott Dep., *supra* note 76, at 45 (noting that most motions at Stern's firm were prepared by paralegals).

[240] Epstein, *supra* note 122.

[241] Burke & McGowan, *supra* note 232, at 47 (citing Ronald J. Gilson & Robert H. Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry Into the Corporate Law Firm and How Partners Split Profits*, 37 STAN. L. REV. 313, 381 (1985)).

[242] *Id*. at 48.

[243] *See, e.g.*, Stapleton & Miller, *supra* note 66 (noting that former Stern attorneys diffused throughout other firms in the market).

firm, and by extension, in their firm's reputation, have clear incentives to monitor young attorneys to make sure they are not sullying the name of the firm.[244] While many reasons explain the decline in mentoring in the profession as a whole,[245] ample anecdotal evidence suggests that foreclosure volume firms placed even less of an emphasis on mentoring than might reasonably be expected when hiring young attorneys.[246]

A related point is that a high volume firm focusing largely on a single area of law probably has few in-house referral networks for other areas of law. This lack of internal referrals likely decreases the incentive to ensure the law firm is hiring quality attorneys.[247] Indeed, perusing the attorney directories at high volume firms, one is unlikely to find more than a few attorneys from top tier law schools.

Looked at from the bottom up, rather than from supervisors down, one can posit that young attorneys at foreclosure volume firms likely did not have role models in the manner that has been documented in large traditional law firms. Young associates at traditional law firms "learn to 'look up and look around'" as they are taught to imitate star attorneys.[248] They also tailor their actions to the values of the lawyers who employ them.[249] In large traditional firms there is at least some evidence of this function leading to objective considerations of how questionable conduct would appear to a judge or a jury.[250]

At foreclosure volume firms, by contrast, it is unlikely that such mimicking, even if it occurred, would have led to more ethical decisions. In cases where very senior attorneys failed to review documents they signed and submitted to courts, it is unlikely that mimicking attorneys higher in the chain of command helped young attorneys make ethical choices.[251] Similarly, although attorneys are influenced by

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[244] Burke & McGowan, *supra* note 232, at 61 (*citing* Larry E. Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749, 753-54).

[245] *See* Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 740-46 (1998).

[246] For example, not only did large foreclosure firms fail to monitor their young attorneys to ensure that associates were verifying facts in their complaints, such as whether or not original promissory notes were lost, but it was a part of those firms' regular procedures to disregard whether notes were actually lost. *See* Transcript of Proceedings at 52, Bank of America v. Keaton, Case No. 09-7541 (Fla. Cir. Ct. Jul. 31, 2009) (in which the principal of a foreclosure firm explains that while lost note counts are often pled, notes are actually lost in only 10% of cases).

[247] *Id*. at 72.

[248] Kimberly Kirkland, *Ethics in Large Law Firms: The Principle of Pragmatism*, 35 U. MEM. L. REV. 631, 691 (2005).

[249] *Id*. at 710-11.

[250] *Id*. at 714.

[251] This is another point that can be applied to foreclosure defense attorneys as well. It is unlikely, for example, that homeowners' attorneys trained by senior associates who are engaged in ethically dubious behavior would gain meaningful guidance on ethical decisionmaking from their superiors. *See* Stapleton & Miller, *supra* note 66.

their peer attorneys,[252] it is unlikely that such imitation in foreclosure firms lead to more ethical outcomes, as many foreclosure attorneys are young and inexperienced.[253] Accordingly, foreclosure firms' lack of the mentoring and mimicking functions that protect large traditional law firms likely hampered the ethical practices of foreclosure attorneys.

B. Foreclosure Volume Firms Share Ethical Risk Factors with Large Traditional Law Firms

1. Economies of Scale

This Article has examined how differences between traditionally examined law firms and foreclosure volume firms may have led to ethical lapses by foreclosure attorneys. However, foreclosure firms do share many risk factors with traditionally researched firms. Many academic studies have discussed why law firms have continually grown in size. One can draw analogies to the growth of high volume foreclosure firms using these studies. Scholars have often noted that the growth of law firms seems connected to utilizing economies of scale.[254] Larger law firms can spread costs of maintaining staff and equipment and can increase their in-house expertise.[255]

Clearly large foreclosure law firms share this trait with large traditional firms. This drive to utilize economies of scale is probably, if anything, increased in high volume foreclosure practices where firms can only depend on a small fixed fee for each foreclosure.[256] As this Article has examined, the enormous case loads maintained by paralegals and attorneys at foreclosure firms exemplify this utilization of economies of scale. These large case loads and lack of proper time to devote to cases likely led to some of the malfeasance this Article has described.

2. Limited Liability Structures

One aspect of traditional large law firms that has challenged attorneys' ethical impulses is the rise of limited liability structures.[257] As one scholar noted, "Limited liability increases lawyers' incentive to gamble with the firm's reputation by hiring more associates than the firm can effectively screen and monitor."[258]

The same can be argued for high volume foreclosure firms: if the David Sterns and Steven Baums of the world can be assured of no personal liability for their firm's misconduct, than they will be tempted to increase paralegal to attorney ratios to such a degree where supervision is hardly extant[259] or approve, if tacitly,

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[252] Kirkland, *supra* note 248, at 710 ("They look to the lawyers they are working for and with.").

[253] Stapleton & Miller, *supra* note 66.

[254] *See, e.g.*, Glenn Harlan Reynolds, *Small is the New Biglaw: Some Thoughts on Technology, Economics, and the Practice of Law*, 38 HOFSTRA L. REV. 1, 6 (2009).

[255] *Id*.

[256] *See, e.g.*, Cabrera Dep., *supra* note 167, at 38.

[257] Ribstein, *supra* note 244.

[258] *Id*.

[259] Smith, *supra* note 196.

questionable conduct. One commentator examining foreclosure firms stated a typical ratio might be ninety to one hundred paralegals for every partner.[260] If partners of foreclosure firms faced personal liability for documentary problems, surely they would have kept their paralegal ratio lower and more closely watched their young associates.

3. Market Forces Risks

Both traditional law firms and high volume foreclosure firms face similar risks of overlooking clients' ethical lapses. In the context of traditional large firms, this can manifest in terms of associates overlooking client wrongdoing in order to maintain client relationships so as to advance in the tournament to make partner.[261] Professor Stephen Bainbridge suggests that this impulse to overlook wrongdoing is intensified when a single client represents a large portion of an individual firm's work.[262] Although high volume firms do not adhere to a strict tournament model, no reason exists why the effects Bainbridge highlighted cannot be applied to high volume foreclosure work and the robo-signing problems that foreclosure attorneys failed to detect.

If one examines an individual attorney's work at, say, the David J. Stern law firm, it is simply unlikely that he or she would blow the whistle on known malfeasance of servicers or banks. Despite the lack of tournament-like upward trajectory at foreclosure firms, one can still imagine that young and inexperienced attorneys would be unlikely to report client misconduct so as to jeopardize business for the firm. While this lack of impulse to report wrongdoing may stem more from a desire not to be fired than from a desire to be promoted to partner, the externality produced is the same. One can argue that, as Bainbridge predicted, it is unlikely in a firm like Stern's where GSEs represented a large portion of referrals that an individual attorney would threaten his or her livelihood by bringing forth wrongdoing by Fannie or Freddie-contracted servicers, much less by attorneys in the firm.

4. Cognitive Bias Risks

Attorneys at firms of all sizes face cognitive biases that can lead to overlooking ethical lapses. One such bias is the overconfidence bias, which leads a person to believe that good things are more likely to happen to them and that bad things are less likely than average.[263] Another bias is the confirmatory bias, leading people to interpret events in the mold of their preconceived notions.[264] Additionally, attorneys are subject to the "very human tendency to assume that 'someone else' is taking care" of problems.[265] Surely these very human risk factors were present in high

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[260] *Id*.

[261] Stephen M. Bainbridge, *The Tournament at the Intersection of Business and Legal Ethics*, 1 U. ST. THOMAS L. J. 909, 918 (2004).

[262] *Id*. at 921.

[263] *Id*. at 922.

[264] *Id*.

[265] Nancy Rapoport, *The Curious Incident of the Law Firm that Did Nothing in the Night-Time*, 1 LEGAL ETHICS 10, 105 (2004) (reviewing MILTON C. REGAN, JR., EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER (2004)).

volume foreclosure firms just the same as they were in firms previously examined in academic literature.

5. Large Firm Isolation

One traditional descriptive factor of attorneys in large firms in the academic literature is a feeling of isolation among young attorneys.[266] As one scholar posited:

> The larger any enterprise, the more difficult it is to feel as though one is a part of it. The lack of integration between a young attorney and her firm or professional community is likely to cause her both to feel less incentive to behave honorably and to feel less accountable for any unethical conduct in which she engages.[267]

This suspicion was confirmed by research conducted as part of the American Bar Association's (ABA) *Ethics: Beyond the Rules* examination of large firm litigators.[268] Most of the litigators queried in the *Beyond the Rules* study "depicted themselves as working alone—or, at best, as participating in a department or practice group that comprised only a small subset of the firm as a whole.[269] In this respect, it is doubtful that significant differences exist between a large elite law firm and a large foreclosure firm.

No evidence exists to suggest that foreclosure firms are somehow more integrated or generate more of a feeling of community within. Accordingly, the very size of foreclosure volume firms—and the fact that they were composed largely of young attorneys—also likely imposes ethical externalities due to a feeling of isolation among newer attorneys.

6. Lack of Positive Reinforcement and Negative Consequences

Traditionally studied large law firms and high volume foreclosure firms likely share a lack of incentives for attorneys to act ethically. Scholars have already noted the absence of positive incentives to act ethically in the context of traditional large law firms.[270] Both associates and corporate in-house counsel in previous studies have expressed their belief that no market exists for ethical conduct.[271] Nothing revealed in this Article regarding the practice of law in foreclosure firms would seem to indicate that high volume firms somehow create new positive incentives to act ethically. Certainly the primary selection criteria of servicers and the GSEs were efficiency and speed, and not ethical conduct or reputation.

As for negative incentives to behave ethically, large firm attorneys have been noted for expressing fears of being fired if they did not go along with questionable

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[266] Schiltz, *supra* note 245, at 725.

[267] *Id*.

[268] Mark C. Suchman, *Working Without a Net: The Sociology of Legal Ethics in Corporate Litigation*, 67 FORDHAM L. REV. 837, 963 (1998).

[269] *Id*.

[270] Robert W. Gordon, *The Ethical Worlds of Large-Firm Litigators: Preliminary Observations*, 67 FORDHAM L. REV. 709, 716 (1998).

[271] *Id.* at 716, 725-26.

ethical conduct.[272] Given the fungible nature of the legal services provided by foreclosure attorneys in high volume firms[273] and the imputation that foreclosure attorneys are replaceable, the incentive to ignore unethical or questionable conduct is likely present in foreclosure firms and likely contributed to some of the misconduct discussed in this Article.

7. Lack of Concern for the Profession

Previous studies of attorneys at traditional law firms reveal that attorneys do not feel that discovery of the truth is any one person's responsibility.[274] Attorneys increasingly revert to the bare floor of rules, rather than examining a sense of obligation to the profession as a whole.[275] The large firm litigators examined as part of the *Beyond the Rules* study, for example, "exhibited little sense of moral duty to the well-being of the larger legal system."[276]

After reading the extensive allegations of attorney misconduct discussed above, one must be skeptical that foreclosure volume firm attorneys are somehow *more* attuned to the health of the legal system than those attorneys in traditional large firms. Indeed, in Florida alone, attorneys filed innumerable foreclosure complaints containing false allegations.[277] Firms that deemed such conduct acceptable and the attorneys who made excuses for filing such allegations clearly did not have their consciences overwhelmed by a sense of duty towards the legal system's drive for truth. Therefore, while foreclosure volume firms are distinct from traditionally examined law firms, the two types of firms share common characteristics and risk factors that may have lead to some of the unethical conduct examined in this Article. The Article next proceeds with newly developing aspects of legal practice and unique aspects of foreclosure firms' business that may have affected the ethical choices of foreclosure firms.

C. Outsourcing

One novel source for this Article's examination of ethical conduct is the implication of outsourcing or offshoring legal document preparation in connection with foreclosure litigation. Scholars note that outsourcing is becoming more common in the legal world,[278] but also caution against the risks attendant with such outsourcing or offshoring. Various examples of legal outsourcing include electronic

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[272] Robert Granfield & Thomas Koenig, *"It's Hard to be a Human Being and a Lawyer": Young Attorneys and the Confrontation With Ethical Ambiguity in Legal Practice*, 105 W. VA. L. REV. 495, 517-19 (2003).

[273] Stapleton & Miller, *supra* note 66 (noting that foreclosure attorneys simply diffused into other firms).

[274] *See* Gordon, *supra* note 270, at 728.

[275] *Id*.

[276] Suchman, *supra* note 268, at 852.

[277] *See, e.g.*, Transcript of Proceedings at 52, Bank of America v. Keaton, No. 09-7541 (Fla. Cir. Ct. July 31, 2009).

[278] Mary C. Daly & Carole Silver, *Flattening the World of Legal Services? The Ethical and Liability Minefields of Offshoring Legal and Law-Related Services*, 38 GEO. J. INT'L L. 401 (2007).

document management, legal transcription, legal coding, data digitization, research, due diligence, proofreading, and more.[279] A variety of reasons exist for outsourcing and off shoring, including saving money, reducing associate "churn," attorneys being able to devote time to more meaningful tasks, and twenty-four hour service.[280]

Foreclosure firms commonly have their legal document preparation completed by third parties.[281] While foreclosure volume law firms are not always responsible for hiring the parties doing the outsourcing, they utilize and file databases and documents prepared by third party processors. Many of these processing companies have come under fire for their own malfeasance in preparing affidavits, assignments of mortgages, and other documents. Lender Processing Services, Inc. (LPS), to give just one example, prepares documents for servicers and lenders in connection with foreclosure litigation.[282] But this work has been riddled with errors and has drawn federal scrutiny[283] and even criminal charges.[284]

Foreclosure firms have also been swept up in the offshoring trend. The document preparation and title search business David Stern owned, for example, "ha[d] approximately 1000 employees and is headquartered in Plantation, Florida, with additional operations in Louisville, Kentucky and San Juan, Puerto Rico. In addition, the Company's U.S. operations [were] supported by a scalable, low-cost back office operation in Manila, the Philippines that provide[d] data entry and document preparation support at a low cost."[285] While Stern spun off his document business so that it would be wholly separate from his law firm, the effect was the same as directly offshoring: his attorneys would utilize the documents prepared by workers in sites around the globe.

Scholars examining the trends of outsourcing and offshoring have noted the potential for ethical problems that such practices portend. First, it is difficult to properly supervise off site workers.[286] When ethical problems are difficult enough to discern in firms' primary locations, protecting against problems in, say, Manila, will be even harder.[287] Moreover, the ABA's Model Rules are not clearly applicable to all off shoring and outsourcing scenarios.[288]

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[279] Aaron R. Harmon, *The Ethics of Legal Process Outsourcing—Is the Practice of Law a "Noble Profession," or is it just Another Business?*, 13 J. TECH. L. & POL'Y 41, 55 (2008).

[280] *Id*. at 56-57.

[281] Scot J. Paltrow, *Legal Woes Mount for a Foreclosure Kingpin*, REUTERS, Dec. 6, 2010.

[282] *Id*.

[283] *Id*. (noting that the U.S. Department of Justice had joined as a plaintiff in certain class action suits against LPS).

[284] Abby Gregory, *Nevada Attorney General Charges Two from LPS*, THEMREPORT.COM (Nov. 21, 2011), http://www.themreport.com/articles/nevada-attorney-general-charges-two-from-lps-2011-11-21.

[285] Press Release, U.S. Sec. & Exch. Comm'n, Chardan 2008 Announces its Acquisition (2008).

[286] Daly & Silver, *supra* note 278, at 424.

[287] *Id*.

[288] *Id*. at 441-43.

Secondly, outsourcing necessarily implicates agency cost problems.[289] When banks and servicers or their attorneys outsource work, possible risks stemming from agency cost problems include: "(1) insufficient effort or shirking; (2) lavish compensation or self-dealing; (3) entrenchment; and (4) poor risk management."[290] Indeed, all of these risks bore sour fruit for banks and servicers.

As to shirking, LPS and similar third parties did not undertake adequate efforts to make sure that documents prepared for use in foreclosure proceedings were accurate.[291] With regard to self-dealing or overcompensation, LPS has similarly been accused of demanding referral fees to attorneys it hired on behalf of servicers.[292] Entrenchment, the idea that "the agent might make bad decisions solely to protect her job,"[293] is also evidenced by LPS's ceaseless drive for speed, despite evidence that its model had produced bad documentation. Finally, poor risk management is self-evident by virtue of the many lawsuits and investigations LPS has faced.[294]

Firms that set up ancillary businesses or segments of their businesses to deal in large amounts of document processing operations, such as David Stern and Steven Baum's firms, faced similar problems to traditionally outsourced firms like Lender Processing Services. As discussed in Part III, the documents produced by Stern and Baum's employees were generally problematic. It is unlikely, therefore, that their document processing operations spinoffs were any more likely to produce correct and properly notarized and witnessed documents. When attorneys themselves are signing affidavits without reading them or without following proper notarization or witness procedures, this study can confirm that, as one scholar has put it, "adequate attorney supervision of legal process outsourcing is wishful thinking."[295]

D. Private Equity Arrangements

Another unexamined aspect of foreclosure attorney misconduct is private equity firms' increasing stake in foreclosure law firms or their ancillary businesses. The *International Herald Tribune* reported "several private equity firms or entities [. . .] have stakes in the business operations of foreclosure law firms in California, Connecticut, Florida, Georgia, New York, and Texas."[296] Private equity's

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[289] George S. Geis, *Business Outsourcing and the Agency Cost Problem*, 82 NOTRE DAME L. REV. 955 (2007).

[290] *Id.* at 974.

[291] *See, e.g.*, Katherine Porter, *Misbehavior and Mistake in Bankruptcy Mortgage Claims*, 87 TEXAS L. REV. 121 (2008); OFFICE OF THE COMPTROLLER OF THE CURRENCY, *supra* note 6, at 10.

[292] Steve Green, *AG Hits Foreclosure Processor With Fraud Allegations*, VEGASINC, (Dec. 11, 2011), http://www.vegasinc.com/news/2011/dec/16/ag-levels-fraud-allegations-against-foreclosure-pr/.

[293] Geis, *supra* note 289 at 974-75.

[294] *See* Paltrow, *supra* note 281.

[295] Harmon, *supra* note 279, at 80.

[296] Barry Meier, *Private Equity Finds Boon in Housing Bust: Buyout Groups Get Profit and Scrutiny with Stakes in Foreclosure Mills*, INT'L HERALD TRIB., Oct. 22, 2010.

involvement in the foreclosure industry began in around 2005.[297] The basic idea behind private equity investment in foreclosure firms, as explained by the *International Herald Tribune*, parallels the rise of David Stern. "A private equity firm [. . .] buys a wide range of services used by the law firm, like its accounting, computer data, document processing and title search documents. Then, a subsidiary of that private equity firm or an entity it controls makes money by providing those services back to that law firm or other businesses for a fee."[298]

This description mirrors the David Stern scenario. After David Stern spun off his document processing operations, his law firm remained the primary client of David J. Stern enterprises. The ethical implications for such spinoffs are substantially similar to the agency cost problems associated with outsourcing discussed above. However, additional considerations do apply.

The David Stern spinoff scenario, for example, poses additional thorny issues. Stern remained a high-ranking officer in the spinoff, David J. Stern Enterprises. Yet he was also the principal at his law firm, which remained contractually obligated to purchase services from his spinoff. It is difficult to say whether his having remained an officer in the spinoff could have influenced decisions made or policies implemented at the law firm. One could reasonably envision Stern choosing not to break the contract with the spinoff even if malfeasance were discovered or if a lower cost source of production were found. After all, he had been paid millions to sell his company and remain a customer. The risk of attorneys having their professional judgment overrun by third party investors' drive for bottom line results has drawn scholarly comment.[299] This aspect of foreclosure firms in particular and the impact of private equity financing on ethical decision-making, therefore, merits further examination and research.

E. The GSE's Retained Attorney Network and the Need for Speed

Any examination of attorney misconduct in foreclosure litigation would be incomplete without assigning at least some of the blame to the government sponsored entities and the crucial role they play in determining which law firms get hired to initiate foreclosure proceedings and how those law firms practice and receive compensation.

Fannie Mae, to begin with one example, began its "retained attorney network" (RAN) list in 1997, from which servicers of Fannie loans choose attorneys to perform default related tasks.[300] The benefit to Fannie Mae was that the RAN allowed it to negotiate more favorable rates and to more effectively monitor and control "timeliness and efficiency."[301] In 2008 this network was greatly expanded

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[297] *Id.*

[298] *Id.*

[299] *See* Chandler N. Hodge, *Law Firms in the U.S.: To go Public or Not to go Public?*, 34 U. DAYTON L. REV. 79, 89, 99 (2008).

[300] OFFICE OF THE INSPECTOR GENERAL, FED. HOUSING FIN. AGENCY, FHFA'S OVERSIGHT OF FANNIE MAE'S DEFAULT-RELATED LEGAL SERVICES 9 (Sept. 30, 2011) (Audit Report: AUD-2011-004), *available at* http://www.fhfaoig.gov/Content/Files/AUD-2011-004.pdf

[301] *Id.*

and Fannie directed servicers to only refer their foreclosure cases to attorneys in the RAN.[302]

Fannie not only dictated which attorneys would be hired, but also dictated strict timelines to complete foreclosures. Fannie Mae actually fined servicers for surpassing these time limits.[303] It is not hard to discern, therefore, that Fannie Mae's drive for speed in processing foreclosures trickled down to the attorneys in the RAN. A former David Stern employee confirmed that Fannie and Freddie "had a singular message: 'Pick up the speed.'"[304]

Worse, Fannie's oversight of the firms was woefully inadequate. The Federal Housing Finance Agency's Office of Inspector General found that Fannie Mae had:

> "inadequate controls in place to prevent or detect foreclosure abuses;"
> "not developed adequate procedures for the RAN," such as procedures for determining when firms would be added or removed, for inspecting law firms on-site, and listing steps employees should take when foreclosure abuses are discovered;[305]
> not provided training manuals for the law firms participating in the RAN; and
> relied solely on law firms' self-reporting to assess their conduct.[306]

These revelations were made worse when news broke that Fannie had evidence of wrongdoing on the part of foreclosure attorneys on several different occasions beginning in 2000.[307] Specifically, a consumer activist alerted Fannie Mae to the wrongdoing, and a Texas law firm conducted a report in 2006 that indicated that attorneys were "routinely filing false pleadings and affidavits."[308] Furthermore, Fannie Mae and Freddie Mac continued to employ firms being investigated by the Florida State Attorney General.[309] Therefore, little doubt exists that through policies of driving the costs of legal foreclosure services down and through continually dictating the speed of foreclosures, government sponsored entities spurred attorney misconduct. Then, even when attorney malfeasance was discovered, it was generally ignored until the national media began reporting on the robo-signing scandals.

F. Servicers' Failure to Monitor

While it may seem counterintuitive to blame clients for their attorneys' misdeeds, some of the blame for foreclosure attorney misconduct assuredly lies with banks and

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[302] *Id.*

[303] *Id.* at 20.

[304] Goldfarb & Cha, *supra* note 30.

[305] Indeed, this seems to be borne out by the anecdotal story of David Stern's hiding problematic files when Fannie inspectors were coming. *See* Scott Dep., *supra* note 76.

[306] OFFICE OF INSP. GENERAL FED. HOUSING FIN. AGENCY, *supra* note 300, at 17.

[307] *Id.* at 13; *see also* Goldfarb & Cha, *supra* note 29 (noting that a Fannie executive was questioned about the class action suit against David Stern's firm).

[308] OFFICE OF INSP. GENERAL FED. HOUSING FIN. AGENCY, *supra* note 300, at 13.

[309] Miller, *supra* note 216.

servicers' lack of proper oversight. Similar to the government-sponsored entities, servicers lacked proper procedures on their hiring, monitoring, and firing of law firms to handle foreclosures.[310] This manifested itself in a number of ways, including:

> the failure to conduct due diligence on the firms they hired and simply relying on the fact that investors had designated certain law firms as accepted;
> the failure to have formal contracts with law firms;
> the failure to monitor law firms for items other than speed and responsiveness;
> the failure to retain documents sent to law firms; and
> the absence of "formal guidance, policies, or procedures governing the selection, ongoing management, and termination of law firms used to handle foreclosures."[311]

While filing false pleadings or signing affidavits without reading them is primarily the fault of an individual lawyer's failure to make an ethical decision, it is also partially due to clients enabling such behavior. Therefore, banks and servicers bear much of the blame for permitting such conduct to continue. Furthermore, the Office of the Comptroller of the Currency, responsible in part for regulating servicers, admitted that it was blindsided by the robo-signing scandals, only becoming cognizant of the violations once the problems emerged in the news.[312]

Finally, servicers' own misconduct must receive some attribution of blame. Indeed, the most routine excuse for attorney misconduct in foreclosure cases is that clients simply fed attorneys with bad information.[313] While this is undoubtedly true in cases where assignments of mortgages or affidavits contained incorrect facts drawn from servicer records or databases, it still does not excuse affirmative acts undertaken by attorneys such as false notarizations or improper verification of affidavits. Servicer misconduct only compounded the problems in foreclosure litigation. Accordingly, this Article has shown that many different parties and factors deserve blame for the attorney misconduct discussed herein. Given the wide scale of the problem, the Article next examines and proposes some possible solutions

VI. POSSIBLE REFORMS

The extensive attorney misconduct analyzed in this Article demands an analysis of possible solutions. Unfortunately, as is the case with many ethical dilemmas, no easy answer exists. Nonetheless, this Article will next attempt to investigate possible reforms that could prevent such widespread attorney misconduct in the future.

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[310] OFFICE OF THE COMPTROLLER OF THE CURRENCY, *supra* note 6, at 9.

[311] *Id.*

[312] *Foreclosed Justice: Causes and Effects of the Foreclosure Crisis (Part I & II): Hearing Before the H. Comm. On the Judiciary*, 111th Cong. 85-86 (2010) (statement of Ms. Phyllis Caldwell and Ms. Julie Williams).

[313] Hundley, *supra* note 163.

A. Reporting Up

One new tack against attorney misconduct previously discussed in the context of the Enron scandal is the Sarbanes-Oxley proposal that attorneys report client misconduct to the client's chief legal officer or chief executive officer.[314] If the reporting attorney did not believe that the CLO or CEO had provided an adequate response, the attorney would then be required to report to others, such as the board of directors.[315] Thus, by analogy, one possible response to attorney malfeasance in foreclosure litigation would be to require attorneys to report misconduct on the part of their clients, as in the case of robo-signing, to highly placed officials in the client's company.

Critics of this approach in the context of the Sarbanes-Oxley discussion argue that making attorneys report client misconduct would decrease clients' willingness to confide in their attorneys.[316] Additionally, this approach shifts the burden of judging what kind of conduct is material enough to be deemed necessary to report to attorneys, and not the client corporations' directors.[317] These criticisms are even more well-founded in this instance.

First, attorneys for banks have consistently argued that their client's misconduct, such as an inadequately verified affidavit, should not be attributed to them.[318] Attorneys for banks and servicers will undoubtedly argue that the most salacious aspects of the robo-signing scandal, such as signing affidavits by the thousands without reading them, is not something an average attorney would be able to discern. No attorney can be expected to assume his or her client didn't read what he or she signed.

Secondly, a requirement to report client conduct will find immense resistance from the inherent market forces risks discussed in Part V. Succinctly put, attorneys are unlikely to report client misconduct for fear of alienating and ultimately losing that client. Younger attorneys may feel even more pressured not to come forward when they are not yet firmly established at their firm. As foreclosure volume firms are already noted for suffering from high attorney turnover, the pressures against reporting client conduct seem to be ratcheted even higher in such a practice environment.

Finally, the reporting up requirement previously contemplated in Sarbanes-Oxley only concerns client conduct. The major thrust of this Article, however, has been not merely the knowing or unknowing attorney ignorance of the bad acts of their clients, but actual affirmative ethical violations by the attorneys themselves. Attorneys already have their own reporting up requirement in the ABA's Model Rules of Professional Conduct.[319] Yet despite this professional obligation, few attorneys

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[314] Moser & Keller, *supra* note 4, at 836.

[315] *Id.*

[316] *Id.* at 840.

[317] *Id.* at 849.

[318] Hundley, *supra* note 163.

[319] MODEL RULES OF PROF'L CONDUCT R. 8.3 (1983) (provides in part that "[a] lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority".)

choose to report, and even when they do, state bar associations have been slow to react.[320]

The ABA Model Rules could, however, be strengthened to make attorney reporting more robust. Currently, the standard of reporting is only of those matters that "[raise] a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."[321] This predictably leads to much rationalizing about not reporting a fellow attorney, because many matters can be downplayed in one's mind so as not to reflect a "substantial" question of fitness.

The ABA Model Rules could also be strengthened by removing the wiggle room on what is "substantial." Attorneys could be prodded to report any conduct that raises a question—no matter how technical—about the lawyer's fitness to practice ethically. No one would suggest that a young attorney filing a lost note count that later turns out to be false, for example, is not fit to practice law. But under the current standard, even when the truth has been revealed, no bar discipline whatsoever will be meted out. No warnings will be given, and no further investigation will be conducted that could reveal more substantive violations of ethical strictures. Thus, a requirement to report even minor acts that call fitness or honesty into question, could glean some positive results, even if only after the sizable delays built into state bar disciplinary proceedings.

The counterpoint to such a revision is fairly obvious. If attorneys reported every act of dishonesty among fellow attorneys, this argument reckons, the state bar would be flooded with "he said-she said" complaints.[322] This fear, however, is tempered by the reality that attorneys simply do not like to report other attorneys.[323] This tendency is only enhanced when one is talking about reporting a fellow firm member or a partner.

A far more persuasive counter to strengthening reporting to include minor misconduct lies in the inefficiencies of state bar disciplinarians, as discussed in Part IV. Even with increased awareness of violations of professional conduct, it is unlikely that state bar associations will ever have the resources or the willpower to promptly resolve ethics complaints so as to meaningfully deter the sorts of misconduct described in this Article, much less violations that are less serious than false notarization and improper verification of affidavits.

Furthermore, previous scholarship encourages skepticism about the propensity for rules providing a comprehensive solution to ethical dilemmas. Rules are manipulable, and attorneys have a strong incentive to resolve ethical issues in favor of their clients and themselves.[324] Rules are simply a floor, and the far more primal

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[320] *See supra* Part IV.

[321] MODEL RULES OF PROF'L CONDUCT R. 8.3(a) (1983).

[322] Indeed, one wonders if litigators would report their adversaries who propound feeble excuses for tardiness to hearings. Would the state bar be required to conduct investigations as to traffic conditions in the case of a traffic jam excuse, or would the state bar have to inspect flat tire repair invoices?

[323] Arthur Greenbaum, *The Attorney's Duty to Report Professional Misconduct: A Roadmap for Reform*, 16 GEO. J. LEGAL ETHICS 259, 284 (2003) (noting the "natural human reluctance to report"); *see also* Schiltz, *supra* note 245, at 714.

[324] Richard A. Matasar, *The Pain of Moral Lawyering*, 75 IOWA L. REV. 975, 977-78 (1990).

driver of attorney behavior is the norms of the firm.[325] Accordingly, rule changes, including mandating attorney reporting of more minor offenses, are unlikely to be a panacea in the case of attorney misconduct in foreclosure litigation.

B. Changing Ethics Education

One solution that could help to prevent similar calamities in the future might be improved ethics education. Scholars have often debated how to better educate future attorneys, noting that many attorneys feel their ethics instruction was not adequate.[326] Ethics courses typically substitute the cold formalism of the rules for the individualistic moral examination of what is right and wrong.[327] As a result, many lawyers are socialized to believe that "technical compliance" or "technical correctness" of their work absolves them of the thorny moral questions responsible professionals ought to consider.[328] And it is not just ethics courses specifically that have been noted to have this downward effect on attorney ethics; the whole process of law schools teaching law as a game can lead to similar effects.[329]

This failure of ethics education has led some to call for more contextualized education with more real-world examples of ethical dilemmas.[330] Additional proposals would integrate ethics considerations into all courses.[331] There seems to be some merit to asking for more "real world" ethics education, as more than one commentator has lamented the tendency of rules-based education to inhibit the active exercise and development of virtues.[332]

When rules will always be manipulable, it does seem that additional contextualized education should be desirable. Young attorneys examined in the scholarly literature ignore the social impact of their actions, and view themselves as simply "'pushing paper.'"[333] In the foreclosure context especially, this paradigm must be thwarted.

Large amounts of young attorneys are responsible for evicting homeowners as part of their practice at foreclosure mills. Many of these attorneys, in a down economy, might not have significantly attractive alternative employment options. Their inadequate ethical education can only further hamper the likelihood that they will question documents passing by their desk on the way to the courthouse. If attorneys are going to continually view themselves as professionals worthy of self-

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[325] Douglas Richmond, *Professional Responsibilities of Law Firm Associates*, 45 BRANDEIS L.J. 199, 201 (2007).

[326] Granfield & Koenig, *supra* note 272, at 508-12.

[327] *Id.* at 513.

[328] *Id.*

[329] *Id.* at 515-16.

[330] *Id.* at 522.

[331] *Id.*

[332] Robert F. Cochran, *Lawyers and Virtues: A Review Essay of Mary Ann Glendon's* A Nation Under Lawyers: How the Crisis in the Legal Profession is Transforming the American Society *and Anthony T. Kronman's* The Lost Lawyer: Failing Ideals of the Legal Profession, 71 NOTRE DAME L. REV. 707, 726 (1996) (book review).

[333] Matasar, *supra* note 324, at 517.

regulation, they must live up to higher expectations. As previous scholarly literature has shown, the current ethical education regime has not adequately prepared them to meet those heightened standards. Improved ethical education could prevent some of the more blatant violations examined in this Article.

D. Strengthening State Bar Capabilities

As this Article has noted, state bar associations in the states hardest hit by the housing crisis have been overwhelmed by the number of attorney complaints and have not taken significant disciplinary action considering the scale of attorney misconduct.[334] This has obvious implications for attorneys facing ethical and moral decisions: the threat of state bar association discipline is very unlikely.[335] One obvious solution for this is to bolster the disciplinary capabilities of state bar associations.

Ample evidence suggests that state bar association disciplinary offices are consistently underfunded.[336] Accordingly, this Article's relatively conservative suggestion is to increase state bar disciplinary budgets to a point where state bar officials would have ample resources to investigate and punish attorney misconduct. A more original concept would be to require state bar associations to independently initiate investigations rather than waiting for official complaints to be filed. This proposal would be particularly helpful in cases where attorney misconduct is reported in the popular press but is not followed up with an official complaint from an attorney or a member of the public

The counterargument to such a proposal is that state bar associations are already known for disciplining small firms more than large firms, so giving more power to investigate may only help discover wrongdoing among small firms. As this Article has examined, the worst offenders in the foreclosure crisis were large, high volume firms, not small or solo practitioners.

On the other hand, these proposals assume that state bar associations are actually interested in robust regulation of foreclosure attorney conduct. Should amply funded and newly empowered state bar associations fail to accept their increased responsibility to investigate and punish unethical behaviors, then the existing disciplinary systems could and should be scrapped.

Commentators have variously proposed instituting a form of a civil liability statutory scheme for attorneys,[337] nationalizing attorney admission standards and ethical codes,[338] and removing lawyer exclusivity over the practice of law combined with governmental takeover of ethical rulemaking.[339] While it is beyond the scope of

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[334] *See supra* Part IV.

[335] Cochran, *supra* note 332, at 723.

[336] Geoffrey C. Hazard, Jr. & Ted Schneyer, *Regulatory Controls on Large Law Firms: A Comparative Perspective*, 44 ARIZ. L. REV. 593, 607 (2002).

[337] David Barnhizer, *Abandoning an "Unethical" System of Legal Ethics*, 2012 MICH. ST. L. REV. (forthcoming), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1950334.

[338] Eli Wald, *Federalizing Legal Ethics, Nationalizing Law Practice, and the Future of the American Legal Profession in the Global Age*, 48 SAN DIEGO L. REV. 489, 493 (2011).

[339] Russell G. Pearce, *The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Regulation of the Bar*, 70 N.Y.U. L. REV. 1229, 1269-70 (1995).

this Article to examine the positive and negative aspects of a myriad of different forms replacement of the current disciplinary system could take, it is sufficient to state that if judges and state bar associations continue to fail to discipline attorneys who file false pleadings and sign documents without reading them, then the time is nigh to take a different tack.

VII. CONCLUSION

This Article commenced by examining the paths foreclosure litigation can take. Whether in nonjudicial states, where courts do not typically examine foreclosure documentation, or in judicial states, which proceed much the same as any other lawsuit, the demand for foreclosure attorney services grew as the recent housing crisis mounted. The growth in large foreclosure law firms grew as demand increased.

The Article conducted case studies of some of the most notorious foreclosure law firms to rise and fall during the housing crisis. Utilizing both news accounts and first-hand reports, the Article confirmed that foreclosure law firms and attorneys have been guilty of faulty, unethical, and fraudulent practices. These questionable practices span a wide range of activities, ranging from outright falsification of documents to a lack of respect for and adherence to court orders.

The Article next proceeded to examine why foreclosure law firms are distinct from traditional large law firms examined in previous literature. Foreclosure firms typically do not share the tournament-for-partner trajectory models that elite law firms follow. Foreclosure attorneys are less impelled by the drive for billable hours than by the drive to favor speedily complete litigation. Foreclosure firms are also marked by the lack of firm-specific capital due to the fungible nature of the legal services they provide, and by the lack of significant mentoring and monitoring functions of higher level partners and associates. Each of these unique characteristics may have lead to the ethical lapses examined in this Article.

The Article did find, however, that foreclosure firms share many characteristics with traditional large law firms. These characteristics engender risks to law firms of all types. Such factors include cognitive biases, the pressure of market forces, limited liability structures, economies of scale, and a lack of positive reinforcement or negative consequences. The Article also examined some newly emerging issues that interplayed with foreclosure firms' ethical issues, including the outsourcing of legal services, the emergence of private equity arrangements in law firms, and the role of the government sponsored entities in foreclosures.

Finally, the Article examined possible reforms. The author concluded that neither reporting up requirements nor reformed ethical education are likely to effectively replace an increase in desire and an increase in resources for state bar associations to investigate and discipline unethical foreclosure attorneys.

The late Professor Larry Ribstein's research into traditional large law firms looks prescient when examined in the context of the foreclosure attorney misconduct examined in this Article. He reported that increased associate to partner ratios in large law firms led to the need to keep associates billing and working.[340] Then, "firms branched into work-like structured finance, which lent itself to large amounts of routine work and significant economies of scale.[341] Some of this work could be

[340] Ribstein, *supra* note 244, at 762-63.

[341] *Id.*

sent down the labor food chain to contract attorneys, outsourcers, or even to machines."[342] Indeed, we can now see that all of these eventualities have come to pass in the realm of foreclosure litigation, resulting in robotic attorney practices culminating in severely troubling ethical lapses.

[342] *Id*.