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Miami-Dade Circuit Judge Beatrice Butchko did not accept arguments that an arraignment order was procedurally flawed

By [Celia Ampel](#) | December 14, 2017 at 03:58 PM

Criminal Contempt Proceedings Go Forward Against Boca Raton Attorney



Criminal contempt charges are still a possibility for two Boca Raton attorneys who [drew the ire of a judge](#) for not producing documents in a foreclosure case.

Miami-Dade Circuit Judge Beatrice Butchko decided Thursday that she would hold an arraignment for Amina McNeil and Yacenda Hudson of Tromberg Law Group, who represent loan servicer Ditech Financial Services LLC. The arraignment was not scheduled, pending an appeal.

“I’ve been on the bench 12 years and I’ve never found myself in this position — and I sanction people a lot,” Butchko said at the hearing. “This is very, very serious.”

But she ruled Ditech representative Christopher Ogden will be dropped from the criminal contempt proceedings initiated by Judge Pedro Echarte. Echarte recused himself after

asking McNeil to identify whose **decision it was to not turn over documents, “because I want to know who goes to jail.”**

Ogden testified in a deposition about **Ditech’s** process for verifying mortgages that originated with another company. After he referred to training manuals that mention a **“red-flag” process, Echarte ordered** Ditech to turn over the manuals before a second deposition. The lawyers showed up for that deposition — scheduled at midnight on a Saturday after they failed to agree on a time — but Ditech did not have the training manuals.

Thursday’s hearing before Butchko was scheduled as an arraignment for Hudson, McNeil and Ogden, but the judge wanted to sort out a procedural issue first: Without any sworn testimony, can judges start criminal contempt proceedings for behavior they didn’t see?

Ditech’s legal team, led by former Florida Supreme Court Justice Raoul Cantero of [White & Case](#) and Bast Amron special counsel Brian Tannebaum, argued Echarte did not follow procedure. The judge made the **decision on his own after the borrowers’** attorney, Bruce Jacobs of Jacobs Keeley, moved for civil sanctions.

“The way that Judge Echarte gained knowledge of the conduct outside of Mr. Jacobs’ motion was to interrogate counsel, future defendants in the criminal case, and ask them to give unsworn testimony about what happened,” Tannebaum argued.

Butchko found the rule allowed Echarte to make the order sua sponte, without any sworn affidavit, based on his conversation with McNeil during **last month’s hearing**. McNeil told the judge Ditech decided not to produce the documents because they believed they were privileged. Butchko also **held Hudson accountable for the conversation as McNeil’s supervisor.**

But a sworn affidavit would be required to pursue criminal contempt proceedings against **Ogden, Butchko found, as the hearing before Echarte did not address Ogden’s role.** **Ogden’s attorney, Patrick Broderick of [Greenberg Traurig](#)** in West Palm Beach, argued the Ditech witness was not involved in decisions about whether to comply with court orders.

“He just works for a place,” Broderick said. “These documents we’re talking about are not his.”

Jacobs argued Ogden’s conduct was part of a broader problem of loan servicers training witnesses to lie under oath about their loan-boarding process, and Butchko said he could make that argument later in the case — as long as he had clear evidence.

“I’m not engaging in some conspiracy theory,” Butchko told Jacobs. “I’m not doing it. It’s a brand-new case to me. ... I need to be able to see it, smell it, touch it, feel it, or else I’m not ruling on it.”

Butchko ruled Ogden was “operating at the will of the lawyers” and dismissed him from the criminal contempt proceedings. She also declined to rule on whether Ditech itself would face charges.

She agreed to grant a stay of the arraignment to allow appeals from McNeil’s attorney, David Weinstein of Hinshaw & Culbertson in Coral Gables, and Hudson’s attorney, Zena Duncan of the Law Office of Zena X. Duncan in Miami. But discovery in the underlying case will go forward, the judge said.

Hudson, McNeil and Ogden did not attend Thursday’s hearing.