

## Lee's 'rocket docket' for expedited foreclosure cases now shelved

By JACOB CARPENTER

Thursday, June 30, 2011

FORT MYERS — After two and a half years, the “rocket docket” is starting its descent.

Spurred by the end of a year-long funding bump Thursday, court officials said Lee County will start reducing its use of the rocket docket, a system that pushed through about 54,000 foreclosure cases since its December 2008 inception.

Originally started to put a dent in the growing foreclosure backlog, the rocket docket became the familiar moniker for the rapid-fire hearings in which judges considered upward of 200 cases per day. It succeeded, cutting the county's backlog down from 24,000 in late 2008 to 7,300 through May.

Now, most cases will be folded into the slower-moving civil court docket, where they were assigned before December 2008.

“With the number of court cases being filed in general down, and the fact that we've substantially reduced the huge pile, I think we're in pretty good shape,” Lee County Clerk of Courts Charlie Green said this week.

For rocket docket supporters, the system put homeowners and lenders into court more quickly, led to faster foreclosure resolutions and returned more foreclosed homes to the market.

For detractors, it cheated homeowners of their civil rights.

The setup, they said, moved cases to trial too quickly, often within a few months from initial court hearings. It made collecting evidence from lenders difficult. Judges also set trial dates before motions to dismiss had been ruled on, critics said.

“I don’t think that, because of the backlog, homeowners aren’t entitled to their constitutional rights,” said Larry Schwartztol, an American Civil Liberties Union attorney who challenged the constitutionality of the rocket docket on behalf of a Cape Coral woman. The 2nd District Court of Appeal issued a one-sentence statement last week, saying it won’t hear the case.

The ACLU’s appeal takes on less immediate prominence as the 20th Judicial Circuit Court, which oversees five counties, including Lee and Collier, scales back its use of the rocket docket.

Lee County will lose three judges, two magistrates and a handful of support staff hired in July 2010 using part of the \$6 million provided by the state Legislature for getting more foreclosure cases through the court. The state, as expected, didn’t renew the funding.

As a result, some rocket docket dates remain, and the courts will continue to rely on the Managed Homestead Foreclosure Mediation process, which encourages early meetings between homeowners and lenders.

“There’s going to be sort of a hybrid moving forward,” said Sheila Mann, court operations manager for the 20th circuit.

While the rocket docket cleared much of the backlog, the courts will be left to deal with several unintended consequences.

Even though the number of new foreclosure filings has dipped below 400 for the past seven months — a decline from the peak of 2,602 new filings in October 2008 — those figures once again could spike.

Deluged by the number of foreclosure cases, several lenders and their lawyers were found to have been “robo-signing,” or signing off on incorrect paperwork without reading it. The scandal came to a head in late 2010, forcing giant lenders such as Bank of America, Citibank, Wells Fargo and others to freeze foreclosure cases. In other instances, they had to restart the process.

Those refiled cases soon will hit the courts, and Green expects the number of new cases in Lee County could hit a monthly total of 1,000. From January to November 2008, before the mass foreclosure docket’s inception, Lee County judges were disposing of slightly more than 1,000 cases on average.

Robert Hynds, a lawyer with the Fort Myers-based Hagen Law Firm, said the looming spike could potentially overburden the courts.

“Now that they don’t have funding and therefore aren’t able to have as many judges and special magistrates, it’s certainly going to slow down the system,” Hynds said.

Another result of robo-signing: Sloppy paperwork caused uncertainty about who actually owns some foreclosed homes. Reports have started trickling out about borrowers sinking money into a home, only to find out they never owned the house.

“A lot of title work is messed up,” said Kevin Jursinski, a Fort Myers-based lawyer whose firm has six lawyers handling foreclosure cases. “There’s several years left before this flushes out because a high percentage of these closings took place with cash.”

The possibility also remains the rocket docket could return if necessary.

“We’re certainly concerned about the prospect that even after the special funding ends, the 20th circuit is going to do something other than reintegrate the cases back into the civil docket,” said Schwartzol, the ACLU lawyer. “Indications are that foreclosure cases will be returned to the civil docket, and if that happens, that’s a positive outcome. But we intend to continue monitoring closely to ensure that.”

Green doesn’t expect an immediate return of the rocket docket — “We’ve got a few dates set aside, but I think it will fade out,” he said — but looks forward to when there’s no concern about the courts’ ability to handle foreclosure cases.

“I think for all of us who have been in it this length of time, it’s been depressing,” Green said. “I’m calloused about it to a point, but at the same time, it’s killing our market. Let’s get them over with.”

