

Hon. James R. Spencer, Hon. Henry E. Hudson,
Hon. Robert E. Payne, Hon. Richard L. Williams
United States District Court Judges
for the Eastern District of Virginia, Richmond Division

Overall, all four judges remain pleased with the quality and civility of the bar, and continue to enjoy their experiences with the lawyers who appear before them. Judge Payne remarked that he is “eternally thankful” that the bar knows how to be zealous and yet remain civil. Conversations with judges nationwide have taught him that this is by no means the norm, and he wanted to ensure that the bar was told “that its behavior is noticed and appreciated.” Judge Hudson also noted that lawyers appearing before him at trial have been properly prepared, showed appropriate respect for the bench, the jury and the opposing counsel and parties, and proved to be excellent advocates for their clients.

Judge Spencer was also complimentary of the bar and agreed that, all in all, relationships between the bench and bar are “pretty good.” However, he has experienced “a few bumps in big cases.” For example, in some patent infringement and Lanham Act cases, he believes foreign lead counsel have failed to use local counsel as they should. In all cases, he stressed, local counsel should be consulted and actively involved in all aspects of a case. Accepting the role of local counsel means accepting responsibility for the case, he said. “You can’t just sit there and bill.” Judge Payne agreed, stating that he would prefer lawyers to decline representations as local counsel “if they are only hired from the neck down,” as he feels they cannot discharge their obligations to the court when functioning in a limited role.

Judge Spencer stated that it is the responsibility of local counsel to ensure that the Court’s rules and its policies and procedures are followed. Judge Payne and Judge Williams agreed, saying that they continue to be surprised by the number of lawyers who appear in federal court but fail to read the applicable Rules of Procedures, the Local Rules, specific rules set forth in the Court’s scheduling and case management orders, and the court’s electronic case filing procedures. The judges advise the bar to continually reinforce their familiarity with these rules, orders, policies and procedures. In particular, Judge Hudson reminds the bar to send a hard copy of pleadings and other filings to his chambers, in addition to filing such documents electronically.

On the topic of electronic filing, Judge Williams repeated his concern that more cases are being removed from state court to federal court, which is presenting a problem for attorneys who are not registered for, or not experienced with, the court’s electronic filing procedures.

Judge Payne identified a number of concerns that he had not previously discussed with the bar. First, he has seen an increasing tendency of lawyers to focus on liability issues in their cases without giving sufficient consideration to damages. He says he has seen lawyers fail to consider how to calculate and prove damages until it is too late. Judge Hudson agrees, and perceives a decline in the quality of the diversity cases being

filed in federal court. Accordingly, Judge Hudson encourages counsel to carefully consider and analyze whether the quantum of damages at issue in a case truly supports the exercise of federal subject matter jurisdiction.

Judge Payne also cautioned against the filing a “motion to dismiss, or in the alternative for summary judgment.” He recognizes, of course, that Rule 12(d) provides for circumstances when a motion to dismiss may be treated as a summary judgment motion, but he believes those circumstances are rare. More common, he says, is a motion that argues under the differing standards for motions to dismiss and motions for summary judgment in a single, enmeshed and improper analysis.

Judge Payne was asked for his views on pretrial conferences. He finds them “a mixed bag.” He stresses that a lawyer who fails to prepare adequately has missed “a real opportunity.” While Judge Payne makes sure he has read the pleadings enough to understand what the case is about, he expects lawyers to use pretrial conferences as an opportunity to further educate the judge. When that is done, he said, it is easier for him to set an appropriate trial date and easier for him to understand any subsequent discovery disputes. Judge Payne reminded lawyers that, while he does not request submission of a written discovery plan before the conference, in complex cases he prefers to see stipulated plans filed after the conference. He advises lawyers to expect a case to be referred to either Magistrate Judge Dohnal or Magistrate Judge Lauck for a settlement conference. He may also refer some dispositive motions to a magistrate for a report and recommendation, as well as some complex discovery disputes. He remains vigilant, however, not to overload the magistrate judges, as “they are plenty busy.”

Indeed, the entire docket remains busy in Richmond. Judge Spencer indicated that while trials are down in the district as a whole, trials have been more frequent in Richmond, with the last several months being among the busiest ever. This is true both for civil and criminal cases. In complex commercial cases in particular, Judge Spencer believes the economic downturn has led parties to be more willing to fight it out in court. “There is now a certain ferocity of defense in some cases,” he said.

Judge Hudson observed that the bar has continued to use the technological capabilities of the court rooms, which has allowed for significant efficiencies during trial, as well as providing for more attentive and content jurors.

Judge Spencer wants the bar to know that the efficiency of the court continues to rely heavily upon the major contributions of the district’s magistrate judges and senior district judges, all of whom “are working at a full clip.” He is eager to see the new district judgeship position filled.

Judge Spencer is finding that the bar is working especially well in discovery matters. “We don’t see too much for resolution in normal civil cases.” Consequently, he remains able to resolve discovery motions himself.

Judge Payne expects the Court to issue some proposed Local Rule changes in reaction to the recent amendments to the Federal Rules of Civil Procedure, and the Court will appreciate receiving comments from the bar. In addition, Judge Payne remains interested in receiving feedback from lawyers about ways in which the Court can improve its processes. He is considering reviving his earlier practice of sending a questionnaire to lawyers after the closing of certain cases, to inform the Court of ways it could make practice better and easier without sacrificing quality.

Each judge was asked for views on the new federal courthouse. Judge Spencer said it is a “magnificent building” and he is happy to report that the move into the new courthouse proceeded well, with only a few matters left to be ironed out. Judge Payne and Judge Williams both appreciate the advantages of the new facility, although both highlighted the sense of isolation that the security-conscious design has brought about. Judge Payne regrets that he now feels further removed even from his colleagues. A common sight in the clerk’s office on Main Street, Judge Payne now finds it harder to see the court’s clerks. Judge Williams says he has found it difficult to maintain even “basic contact” with the bar. It is hard to get out of the court, and hard for the bar to get in. Interacting with lawyers only in the courtroom, says Judge Williams, is uncomfortable for a judge used to “rubbing elbows” with the bar, and he fears that the court and the bar could “become strangers.” In these security-conscious times, he is uncertain what could be done to ameliorate the situation, but he is struck these days by a “sense of isolation.” Electronic case filing, he says, only adds to the lack of direct contact.

Judge Williams indicated he would be delighted to see more young lawyers appearing before him, and with greater frequency. He urges the bar to allow young lawyers to gain courtroom experience, while ensuring that they have the proper guidance and supervision.

Overall, the judges agree and are thankful for the good relationship between the bench and the bar, and, as Judge Payne put it, “that’s why it all generally works pretty well.”