

**Hon. Henry E. Hudson, Hon. Robert E. Payne,
Hon. John A. Gibney, Jr.
United States District Court Judges
for the Eastern District of Virginia, Richmond Division**

In an effort to facilitate the administration of justice in Richmond and in the Commonwealth, the Administration of Justice Committee recently conducted its annual interviews with the United States District Court Judges for the Eastern District of Virginia, Richmond Division. As always, the Judges provided significant insight into the relationships that exist between the bench and the bar. Our committee would like to thank the Judges for their time, and to share their thoughts with all of the Association's members.

Hon. Henry E. Hudson

Judge Hudson remains pleased with the quality and civility of the bar, and continues to enjoy his experience with lawyers who appear before him. Judge Hudson remarked that the bar is very collegial, and that he appreciates their efforts in working out cases short of trial. He notes that when working as local counsel, you are considered by the Court to be the primary point of contact and it is your responsibility to ensure timely filings and compliance with local rules. This has not been a problem from his experience.

Judge Hudson observed that because of the jurisdictional limit for diversity many cases are being removed from state to federal court and, as a result, many typically state law cases are being tried in federal court. While noting that this a matter for Congress to address and not the courts, Judge Hudson encouraged counsel to be mindful of the quantum of damages at issue in a case and to ensure that the case truly warrants an exercise of federal subject matter jurisdiction.

On the topic of e-discovery, Judge Hudson advised that he does not see many e-discovery disputes because, for the most part, they are resolved by the Magistrate Judges. He did state that there are more patent cases being tried in the Eastern District because of an expansion of the patent jurisdiction and estimates that approximately 50% of those cases go to trial.

Judge Hudson stated that the Court's docket is busy and while the aspiration is to get cases to trial in 6 months, because of the case load, in some cases the trials are set closer to 7-8 months from the date of filing.

Hon. Robert E. Payne

Judge Payne reports that the past year has been one of the busiest years that he can remember in his career on the bench with an increase in the number of civil and criminal cases being tried. Specifically, Judge Payne reports that more complex civil cases are being tried in the intellectual property and commercial litigation arenas. On the criminal side, Judge Payne reports that more sophisticated fraud cases are being tried. Overall, he is impressed with the quality of lawyering before him.

As a consequence of the increased number of cases being tried, particularly in the intellectual property area, members of the Richmond bar often find themselves in the role of local counsel. In Judge Payne's experience, the lawyers that appear before him are fulfilling their responsibilities as local counsel. He believes Richmond lawyers need to set expectations for out of town counsel on the culture of the Eastern District of Virginia. In the Eastern District, Judge Payne believes that civility is an important component of the practice of law. Counsel can represent their respective clients zealously, while at the same time conducting themselves in a civil and professional manner. Judge Payne believes this is an important and distinguishing characteristic of practicing in the Eastern District. With a specific reference to discovery disputes, Judge Payne believes that out of town counsel must be educated by their local counterparts that here "lawyers do not run cases."

When asked about advice for new lawyers, Judge Payne stressed that lawyers must know how the Federal and Local Rules and the Court's scheduling orders operate. The structural foundation lends itself to the expeditious manner in which cases are handled in the Eastern District. As one practice pointer, Judge Payne disfavors the filing of briefs during trial unless specifically requested by the Court. He also cautions young lawyers on the pressure technology has brought to the profession in terms of client expectations of instant communication and advice. Judge Payne reminds young lawyers that the practice of law requires "research, reflection and thought" and clients' expectation must be set accordingly.

In the year ahead, Judge Payne believes the Court will continue to hear more intellectual property and complex commercial litigation cases.

Hon. John A. Gibney, Jr.

Overall, Judge Gibney believes the local bar is doing a really good job, remains collegial, and is generally well prepared when they come before the court.

According to Judge Gibney, the court's docket remains quite busy. Despite the volume of matters before the court, though, Judge Gibney has been able to set most of his cases for trial consistent with the Rocket Docket philosophy, and typically a little farther out than six months from the date of filing. He commented that doing so makes the parties and their attorneys focus on what is important in the case.

Judge Gibney noted that the bar seems to be working out discovery matters very well, and that he sees very few discovery issues raised before him. In the e-discovery arena in particular, the parties have been quite successful in agreeing upon protocols and procedures that are acceptable to all parties.

Judge Gibney noted a couple of significant provisions in the standard orders entered in his cases. In the Initial Scheduling Order, Judge Gibney permits any counsel whose office is more than fifty miles from the courthouse to attend the initial pretrial conference by phone. In his Initial Pretrial Order, Judge Gibney sets the close of

discovery at 70 days before trial, with the requirement that all motions for summary judgment be filed no later than 60 days before trial.

As to local attorneys who do not find themselves before the federal bench that often, Judge Gibney suggested that they should seek out a mentor within their firm or in the local bar. A mentor should be able to provide helpful advice about practice before the court in general, and specifically about the rules, orders, policies and procedures that all lawyers need to know and follow. As to foreign lead counsel, Judge Gibney stated that these attorneys sometimes appear before the court without having an appreciation for the manner in which cases are handled in the Richmond Division. Therefore, Judge Gibney suggested that local counsel should provide the foreign lead counsel with some insight into the collegiality of the local bar, and how local attorneys have learned to be zealous in their representation and yet remain civil.

As for the courthouse, Judge Gibney remarked that it is a wonderful building, but that the security conscious design isolates him from members of the bar and his own colleagues. Therefore, Judge Gibney encourages attorneys to be more proactive in the interaction with the court outside the courtroom and “come see me”. For instance, Judge Gibney commented that local attorneys should feel free to schedule some time with him after a matter has been successfully resolved to discuss “how things could have been done better”.

**Due to a pressing schedule, Judge James R. Spencer was unable to meet with the Administration of Justice Committee members this year.*