

In its continued effort to promote the administration of justice in the Richmond area and to facilitate cooperation between the bench and the bar, the Bar's Administration of Justice Committee recently concluded its annual interviews with the Honorable Judges of the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division and Honorable Judges of the Courts of the City of Richmond. As in years past, the Judges were gracious with their time and spoke with candor to Committee members regarding the Court's work and the performance of the bar in their courtrooms.

The Honorable Kevin R. Huennekens and the Honorable Keith L. Phillips – United States Bankruptcy Court

Representatives of the Administration of Justice Committee of the Richmond Bar Association ("RBA") met with U.S. Bankruptcy Judges Kevin R. Huennekens and Keith L. Phillips, together, on November 13, 2016. Overall, both Judges are pleased with bankruptcy practitioners and the civility and quality of work performed by members of the Bankruptcy Bar. In particular, the Judges highlighted (i) new federal rules and new local rules, (ii) pro bono and outreach efforts by members of the bar, and (iii) the use of technology in the Bankruptcy Court and the CourtSolutions system.

The Judges reminded members of the Bar that, effective December 1, 2017, there are new, amended Federal Rules of Bankruptcy Procedure (the "Federal Rules") and Local Rules for the Eastern District of Virginia (the "Local Rules"), as well as new forms and notices for filing. As to the Federal Rules, the majority of amendments pertain to Chapter 13 cases and required forms and deadlines. As to the new Local Rules, the Eastern District has adopted a new form Chapter 13 plan and new reporting requirements concerning post-petition mortgage payments. The Court's web-site includes public notices and links that provide in-depth details regarding the amended Federal and Local Rules and new forms and requirements. With respect to the Court's form Chapter 13 plan, practitioners should be aware that the U.S. Bankruptcy Court for the Western District of Virginia does not utilize the same form as the Eastern District.

The Judges are very pleased with the current pro bono and outreach efforts undertaken by members of the Bankruptcy Bar, including the Greater Richmond Bar Foundation's Triage Project that includes pro bono Chapter 7 debtor consultation and representation and the Credit Abuse Resistance Education ("CARE") program. As to pro bono efforts, the Judges are excited and would encourage all practitioners to become involved with pro bono consumer debtor programs. These programs have reduced the number of pro se filings in the Court's Richmond Division relative to other Divisions in the Eastern District.

As cell phones and other electronic devices are generally not allowed in the Richmond federal courthouse absent specific authorization, the Judges are pleased with practitioners' adherence to this rule and with the use of the CourtSolutions system for telephonic participation in hearings. The use of CourtSolutions has reduced background noise and other complaints regarding telephonic hearings in the past, particularly in large Chapter 11 cases.

Generally, the Judges have observed that the number of bankruptcy filings has likely hit a low that may begin to rebound slightly, and their caseloads have not changed drastically in the past year. Congress has also passed legislation that authorizes a temporary judgeship in the Eastern District for another 5 years, allowing the current number of 6 Bankruptcy Judges to remain in place during that period.

In conclusion, the Judges are happy with the efforts and civility among the Bankruptcy Bar and encouraged its members to continue such efforts and to remain involved with valuable outreach programs.

The Honorable C.N. Jenkins, Jr. –
Richmond Circuit Court

Judge Jenkins continues to appreciate the professionalism and collegiality of the local bar, emphasizing how fortunate the Richmond bar is to have such high caliber attorneys.

Judge Jenkins relayed several practical comments regarding motions practice in the Richmond Circuit Court. The Court requires that counsel file motions prior to setting them for hearings and that counsel provide accurate time estimates for motions hearings. The parties should also avoid piggy-backing new motions on those previously set for hearing without first obtaining any additional time that may be needed.

Relatedly, the Court also requests that parties follow the Rules of the Supreme Court of Virginia with regard to the timing and length of briefs. It is the Court's practice to rule from the bench on most motions when possible, so it is important for matters to be briefed fully and filed with sufficient time for the Court to consider the issues prior to the hearing. If a party files a brief later than a deadline set by the Rules, the party should provide a courtesy copy of the brief to chambers. Also, in keeping with the Court's practice of ruling on motions efficiently and expeditiously, the movant should have a sketch order drafted at the motion hearing.

Judge Jenkins also requests that parties truly confer regarding discovery disputes prior to bringing them to the Court's attention. The Rules require that parties make a good faith effort to resolve discovery disputes without Court action. This meet and confer requirement means that parties should communicate, when possible, in person, or at least by telephone, to discuss in detail their dispute. Relying only on email exchanges usually appears to be ineffective. The Court often finds that many issues that come before it could have been resolved without the Court's action if the parties had truly conferred in good faith regarding the dispute prior to seeking the Court's involvement.

Where the issue is easily resolvable, Judge Jenkins is willing, if available, to entertain by telephone objections and other issues that may arise during a deposition.

As for trial practice, the Court notes that counsel should be considerate of jurors' time and sensibilities. Parties should aim to resolve as many issues as possible by stipulation prior to the day of trial. In particular, the parties should circulate and try to agree upon jury instructions prior to trial. Also, counsel should be considerate of jurors' backgrounds and potential sensitivities during voir dire.

Judge Jenkins recognizes that it is harder than it used to be for young lawyers to get trial experience. He advises that young lawyers look for opportunities to try cases in General District Court. Additionally, taking pro bono cases is a good way to get this experience. Putting one's name on the criminal appointment list is also a way to gain trial experience.

Finally, the Court stresses that it aims to be user-friendly. A case is assigned to a specific judge once it is filed in Richmond Circuit Court. Counsel may feel free to contact the assigned judge's chambers with questions concerning logistics and other issues particular to a case. The Court is also interested in receiving feedback from attorneys.

The Honorable Tracy Thorne-Begland – Richmond General District Court

Judge Tracy Thorne-Begland continues to guide the Richmond General District Court through a time when it is expected to fulfill more obligations to the public with fewer judges as well as less staff in the clerk's office. This year the General Assembly transferred four Deputy Clerk positions out of Richmond. The court is also operating with six judges now when there have historically been eight.

On top of this, the General Assembly and Supreme Court imposed new requirements on the clerk's office regarding payment plans for restitution. The workload for the clerk's office has increased tremendously as it deals with a high volume of renewed and defaulted payment plans, which requires a significant amount of time-consuming data entry.

With regard to these changes, the court is working to maintain control of the docket size. One thing that has helped is the elimination of the Manchester Compact that previously mandated that criminal cases be heard in the Manchester Courthouse if the matter occurred south of the river and in the John Marshall Courts Building if it occurred north of the river. Since that has been eliminated, the courts can now move the assignments of agencies and law enforcement more freely to balance the caseload. They are now one year into the restructuring of the court. There are four judges sitting in all three divisions and two sitting in two divisions.

The judges are trying their best to wrap up the criminal docket on time and the 11:30 a.m. traffic docket seems to be moving efficiently. The court chose this time hoping that citizens could utilize their lunch break and limit the time missed from work to appear in court. The number of judges has had the unfortunate effect of pushing out civil trial dates. The court is seeking to combat this issue by double-stacking trials. It is also very helpful to everyone if attorneys let the court know as soon as possible when a civil case settles. That is valuable time that can potentially be used for other trials or motions.

Judge Thorne-Begland is very pleased with the work of the attorneys before the court and appreciates their patience as the court worked through this restructuring period. He emphasized having good communication with the court; for example, asking attorneys to call the court if they are running late. For civil attorneys, especially large volume filers, Judge Thorne-Begland encourages checking in with the clerk's office either the day before or early the morning the cases are to be heard to ensure everything is in order. He also requests that these attorneys are cognizant of the daily filing limitations.

For criminal attorneys, the court advises that, consistent with other motions, bond motions are now to be filed with the court in lieu of filing with the Commonwealth Attorney's office. The court relies heavily on its high functioning pretrial services unit. One of the major issues the criminal court is facing at this point is the amount of time it takes to get certificates of analysis back from the Department of Forensic Science (DFS). Police officers in the city no longer field-test any powdery substances due to the increase in fentanyl abuse. This is one of the factors contributing to the backlog at DFS. Moreover, a backlog at DFS can affect issues of bond for clients being held awaiting trial. The mental health docket is continuing to service those in need and is held every Friday at noon.

The Honorable Ashley K. Tunner –
Juvenile and Domestic Relations District Court for the City of Richmond

On behalf of all the Judges of the Richmond Juvenile Court, Judge Tunner emphasized the very important role court-appointed attorneys play in her Court. The Richmond Juvenile Court relies heavily on court-appointed counsel due to the large number of pro se litigants, indigent defendants, and foster care cases.

The number of court filings and hearings have stayed pretty consistent with that of last year, but there has been a 13% increase in the number of adult felonies filed in the Richmond Juvenile Court and a slight increase in delinquency petitions. The City of Richmond has the largest number of children in foster care in Virginia. Therefore, the need for dependable, qualified court-appointed lawyers to represent parents and children is great. The Court also has many cases in which conflicts of interests arise for the public defender's office creating additional need for court-appointed counsel from the private bar.

The Court has 70 attorneys on the court-appointed list. There is an application process whereby new attorneys are added to the list each year. The Court's application is only two pages and takes approximately 10 minutes to complete.

The Court believes it is important to give attorneys who are interested in serving as court-appointed counsel – either new attorneys or attorneys who are perhaps changing their area of practice – the opportunity to work in the court if they request to do so.

Attorneys interested must be certified by either the Virginia Indigent Defense Commission if interested in representing criminal defendants (<http://www.vadefenders.org/certification/>). If interested in serving as a guardian ad litem for children, the attorney must be qualified by the Office of the Executive Secretary of the Supreme Court of Virginia (http://www.courts.state.va.us/courtadmin/aoc/cip/programs/gal/children/gal_standards_children.pdf).

In creating the application and the application process, the Court wanted to establish transparent, objective, and consistent criteria for those attorneys interested in serving on its court-appointed attorney list. From its survey of other courts around the Commonwealth, it found few had a formalized process.

The judges appreciate all of the good work done by court-appointed counsel and recognize that court-appointed lawyers do difficult work for relatively little financial reward. The cases heard in the court are often emotionally taxing and require attorneys to participate in multiple hearings to work through an array of difficult issues. The nature of these challenging cases may contribute to performance issues with some attorneys. While the majority of the lawyers who serve on the court-appointed list demonstrate the highest level of professionalism both in and out of the courtroom, the Court has observed and received reports of a decline in civility among some of the lawyers who appear regularly in the court. The Court would like to take this opportunity to share its concern and to encourage lawyers to display courtesy and professionalism when interacting with other lawyers, social workers, CASA volunteers, court mediators and litigants.