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 Administration of Justice Committee recently concluded its annual interviews with the Honorable Judges for the Eastern District of Virginia, Richmond Division. As in years past, the Judges were gracious with their time and spoke with candor to Committee members regarding settlement conferences, discovery matters and familiarity with Local Rules.

The Honorable Henry E. Hudson

Judge Hudson continues to appreciate the collegiality and professionalism of the local bar in interacting with the Court and each other.

Judge Hudson relayed two practical matters for attorneys practicing in the Court. First, he emphasized the importance of observing the Court's courtesy copy requirements, which are available on the Court's website. Judge Hudson personally requires that counsel provide his chambers with courtesy copies of all filings. Second, Judge Hudson noted that the Court strives to be user-friendly. He recommended that counsel should not be afraid to contact chambers with questions.

Only 2% to 3% of Judge Hudson's cases go to trial. Judge Hudson did note, though, that while the number of civil trials proceeding to trial has remained consistent over the past few years, there has been a recent uptick in the trial of criminal cases. Should a case proceed to trial, Judge Hudson stressed that pre-trial motions should be heard prior to the first day of a jury trial. Counsel may contact Judge Hudson's chambers to set up a pre-trial hearing on motions in limine and other pre-trial motions.

Judge Hudson recommends that counsel take as much advantage as possible of the Court's regularly ordered settlement conferences and the valuable service of the Court's Magistrate Judges in attempting to resolve cases prior to trial. While Judge Hudson will not force parties to attend a settlement conference in all cases, he finds them to be very important in resolving disputes efficiently and reducing the number of cases that proceed to trial. The Court is particularly pleased with a recent program designed to assist pro se litigants during settlement conferences. Through a partnership with the Federal Bar Association and the Richmond Bar Association, the Court has implemented a program whereby attorneys may register to assist pro se litigants during settlement conferences on a pro bono basis.

As for motions practice, Judge Hudson generally refers most standard, non-dispositive motions to a Magistrate Judge for resolution. His policy is not to grant hearings for motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Finally, Judge Hudson encouraged counsel to resolve discovery disputes prior to bringing discovery matters before the Court. Should a discovery dispute reach the Court, Judge Hudson will resolve it as he does other motions. Judge Hudson does not employ a different approach to discovery disputes as do other judges of the Court.

The Honorable John A. Gibney, Jr.

Judge Gibney is generally very pleased with the caliber of the attorneys practicing in his court, describing them as the "cream of the crop." One of his few complaints, however, is addressing discovery disputes—primarily with attorneys from other jurisdictions who are not familiar with his discovery practices or the swift pace of proceedings in the Eastern District of Virginia. Judge Gibney believes in broad, open discovery, and has little patience for discovery gamesmanship.

When a discovery motion is filed—which he believes should be in very limited circumstances—he will often contact the parties quickly for a teleconference and attempt to resolve the issue without the need for further Court involvement. He strongly encourages the parties to engage in a *meaningful* meet-and-confer before filing any discovery-related motions, urging lawyers to pick up the phone and try to talk through disputes with opposing counsel. He noted that sending a single e-mail—sometimes a transparent attempt to manufacture the basis to file a discovery motion—is not sufficient. He remarked that the purpose of Local Civil Rule 26(C)'s requirement to serve objections to written discovery 15 days prior to substantive responses is to promote the early resolution of discovery disputes. Judge Gibney recommends meeting and conferring before serving any objections. Although discovery misconduct will not be tolerated, Judge Gibney discourages the filing of motions for sanctions absent truly compelling circumstances.

Regarding motions practice in general, Judge Gibney notes the strength of most briefs he receives. That being said, he suggests that, where possible, attorneys perform multiple revisions before filing, as grammatical errors and typos can greatly reduce the effectiveness of otherwise sound argument. Moreover, Judge Gibney cautions against using snarky language or ad hominem attacks against opposing parties or their counsel. Relatedly, he feels that the overuse of adverbs and adjectives detracts from, rather than enhances, the argument. Judge Gibney further believes that the page limitations set forth in the Local Rules provide ample space for the parties to make all but the most complicated arguments, and he is unlikely to grant motions to increase page limitations.

Judge Gibney believes that the use of courtroom technology can be very effective and encourages attorneys to contact the Court's clerks to get a tour or tutorial if they are not familiar with the courtroom's technological capabilities. As an example, Judge Gibney suggested that technology could assist the Court in reading and understanding complex contract provisions during oral argument.

More generally, Judge Gibney is genuinely open to interaction with the local bar. He encourages attorneys to contact him should they have any issues or recommendations related to the practice of law in his courtroom.

<u>The Honorable M. Hannah Lauck</u>

Judge Lauck was most complimentary of the RBA and of our local federal bar. She highlighted local lawyers striving to practice with excellence and true civility toward one another, thereby promoting a positive atmosphere in which we all want to practice.

The EDVA is known far and wide as the "Rocket Docket." Judge Lauck views this characterization as a positive one. Litigants seek answers, and in the EDVA, they typically get those answers faster. That can also have the effect of reducing legal fees and costs, byproducts of protracted litigation. Judge Lauck notes that depending on the case and the issues, there can in fact be flexibility within the "Rocket Docket." However, if a case lingers too long, the parties tend to feel as if justice is not being served, so the EDVA emphasizes *finishing* cases.

Judge Lauck encourages the local bar to consent to trial by Magistrate Judge. The Court's Magistrate Judges are available, they are highly qualified and handle all the same types of cases as the Court's District Judges (including class actions). Magistrate jurisdiction is a particularly good fit for cases seeking prompt resolution. Judge Lauck encourages lawyers to explain these factors to their clients and to utilize the Court's Magistrate jurisdiction option.

Judge Lauck says that overall, local lawyers handle discovery disputes well. Discovery disputes are of course disfavored by the Court, and discovery motions are not commonly filed. If a discovery dispute emerges, Judge Lauck encourages lawyers to identify the dispute early, engage their clients in resolving the issues, and focus on solving the dispute rather than resorting to a discovery motion and related briefing. The goal from the beginning should be to center on the core of the dispute and narrow or eliminate the number of items at issue.

If parties and their counsel are unable to resolve a discovery dispute after good-faith meet-and-confer efforts, Judge Lauck's standard scheduling order requires the parties to file a Joint Statement. The Joint Statement – which typically takes on a different tone than other pleadings – is a collaborative project and must be submitted in chart form, with the parties detailing and itemizing each discovery request in dispute, each objection/answer (along with the factual basis and legal support), each response to each objection (with factual and legal support) and a separate column for the Court's ruling.

In Judge Lauck's experience, this Joint Statement process saves time and effort for all by encouraging dialogue, interaction and compromise between the parties and their counsel. When lawyers view their position on a particular discovery issue through the joint-filing lens, they (and their clients) may take a more reasonable, objective position on a particular discovery request or response – or even drop a disputed area altogether. Ultimately, the requested information or documents are either discoverable or not and a decision needs to be made without dragging the matter out.

Judge Lauck shared thoughts on motions to dismiss and motions for summary judgment. They are not appropriate in every case. It is better to move to dismiss only those claims as to which the moving party has a strong argument, than to lose credibility by moving to dismiss claims where the argument is clearly a stretch. It is the same with motions for summary judgment. She notes that counsel must be accurate and realistic in setting forth for the Court what is and what is not a disputed fact. If there is a question about whether a fact is disputed, it is most likely in dispute. Often, motions for summary judgment may best be suited for some but not all claims of a particular case. In that event, counsel moving for summary judgment on some of the claims is in fact attempting to narrow the case to its core; that can be helpful for all.

Judge Lauck notes that with the Court's full docket and the high-quality of the briefs generally submitted by the local bar, oral argument is not routinely granted. On occasion, if the Judge has specific questions, she may note in an order what particular issues the parties should come to Court prepared to address. When argument is granted, it is best to have the motion argued by the lawyer who has the best command of the relevant record, even if that is not one of the senior lawyers. Also, with fewer opportunities for young lawyers to get substantive experience in oral argument, if a law firm would like a less-experienced attorney to argue a motion, it can let the Court know by contacting chambers. Depending on the docket, the case and the motion at issue, chambers may be able to schedule the argument.

In closing, Judge Lauck reports that judges are the last generalists and that she is still encountering new things in the law. She considers it an absolute privilege to come to work each day and perform her job. She finds it hard, meaningful and intellectually stimulating work. She is genuinely thankful for the good work of the Court's staff and the local bar.

<u>The Honorable David J. Novak</u>

Judge Novak appreciates that the Richmond Bar continues to show professionalism and courtesy when practicing before him. Judge Novak relies upon local lawyers who serve as local counsel to advise out-of-state lawyers on the practices of this district. As such, he encourages local counsel to remain actively engaged in their cases, rather than becoming bystanders.

Many members of the bar that regularly practice in the Richmond Division of the Eastern District of Virginia already know about Judge Novak's approach to conducting settlement conferences. Nevertheless, Judge Novak has a few remarks that he believes will aid all practitioners who appear before him for court-ordered settlement conferences.

Judge Novak stresses that counsel should educate their respective clients about the nature of his settlement conferences. First and foremost, it is crucial for clients to understand that the magistrate judges' role in such conferences differs from a private mediator's role. The magistrate judges' role is to settle cases quickly and efficiently, when possible, to lighten the dockets of district judges. The process is time-sensitive, as magistrate judges must allocate a limited amount of time between leading settlement conferences and managing their daily criminal docket. As Judge Novak explains, there is not much time for the usual introductory "dance" of unrealistic settlement offers and demands. Counsel should prepare their clients for the settlement conference-equivalent of speed dating. Judge Novak expects the parties to get to the point.

Judge Novak is particularly pleased with a recent program employed by the Court to assist pro se litigants during settlement conferences. Through a partnership with the Federal Bar Association and the Richmond Bar Association, the Court has implemented a program whereby attorneys may register to assist pro se litigants during settlement conferences on a pro bono basis. Judge Novak believes this program is an effective way for newer attorneys to obtain experience in federal court, and he encourages more attorneys to participate.

Judge Novak also indicated that lawyers, who have not regularly appeared in federal court, should feel comfortable doing so, because the Court is user friendly. Counsel should, though, appreciate its speed as compared to state court litigation. Judge Novak also emphasizes the importance of written submissions in federal court, as they typically require more detail and time than state court pleadings.

Finally, Judge Novak adds that Local Rule 37's meet and confer requirement requires a legitimate conference held in good faith before filing a discovery motion with the Court. If Judge Novak senses that counsel have not conferred in good faith prior to filing a discovery motion, he will order the parties to meet and confer in person. Attorneys are strongly encouraged to narrow the disputed issues as much as possible before filing a discovery motion with the Court.

<u>The Honorable Roderick C. Young</u>

As a general matter, Judge Young believes that the Richmond bar is very competent and collegial. He observes that most lawyers appearing before him are professional, prepared, and courteous. He does, however, have some constructive suggestions for how lawyers can be more prepared and helpful in handling matters before him.

First, Judge Young notes that some lawyers do not take the time to read his orders, including, perhaps most often, his order establishing procedures for settlement conferences. Judge Young encourages lawyers to read all applicable orders before contacting his Chambers to ask questions that are directly addressed in his orders (e.g., pre-mediation deadlines and procedures). Judge Young strives to have a "user-friendly" Chambers but would appreciate it if lawyers would more consistently exercise self-help and review his orders before making inquiries to Chambers.

Second, lawyers sometimes fail to inform Chambers when cases have settled. It can be frustrating and inefficient when Judge Young and his law clerks are actively working on a motion or mediation preparations and do not receive prompt notice when a matter has been resolved.

Third, and most often in the criminal context, Judge Young is displeased when lawyers arrive late to his courtroom and then ask for time to meet with their clients before addressing the Court. This is sometimes unavoidable, but Judge Young would appreciate it if lawyers would always make an effort to arrive in court on time and ready to proceed.

Fourth, Judge Young notes that one recurring issue he has seen in pleadings is the failure to allege the citizenship of each member of a limited liability company that is a party to litigation. This helps to determine an LLC's citizenship for purposes of diversity jurisdiction, and Judge Young has seen this critical information omitted numerous times.

Fifth, when serving as local counsel, lawyers should make sure to sensitize their out-of-state co-counsel to the practices and procedures in the Eastern District of Virginia. With respect to settlement conferences specifically, Judge Young has seen out-of-state lawyers sometimes arrive in the morning with a lackadaisical attitude or unprepared to "get ready to work" immediately in negotiating settlement. Judge Young takes settlement conferences very seriously, and he has the same expectation for counsel and their clients.

Sixth, with respect to written settlement submissions, Judge Young feels that all parties in all cases have one or more weaknesses, with very rare exceptions. He urges counsel to be candid and transparent in addressing them and notes that the most effective lawyers will address potential weaknesses preemptively. He also cautions lawyers and their clients to *realistically* value their cases. Inflated or deflated values—or grossly unrealistic demands and offers—only waste time and impede settlement.

Finally, when asked what advice he would give to new lawyers, Judge Young remarks that it "all comes down to being prepared." If a new lawyer shows up to court with good knowledge—and print-outs—of applicable statutes, rules, and dispositive cases, that will always serve them well and can compensate for a relative lack of experience.