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 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 the Court's work and the performance of the bar in their courtrooms.

The Honorable Henry E. Hudson

Judge Hudson continues to appreciate the collegiality and professionalism of the Richmond Bar in interacting with the Court and each other. Judge Hudson encourages more experienced attorneys to provide newer attorneys with opportunities to argue motions, attend mediations, and become more familiar with the Court's customs and practices. If counsel would like an associate to present oral argument on a non-dispositive motion that otherwise might be decided on brief, Judge Hudson is more than happy to afford counsel the opportunity for oral argument on the motion. In addition, Judge Hudson is a proponent of working with law students, and encourages attorneys to invite law students to observe appropriate Court proceedings, including hearings, status conferences, mediation, and trial.

Judge Hudson relayed two practical matters for attorneys practicing in the Richmond Division. First, he emphasized the importance of observing the Court's courtesy copy requirements, which vary based on the Judge, and are available on the Court's website at http://www.vaed.uscourts.gov/documents/RichmondInformation-6-7-18.pdf. 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.

A very small percentage of Judge Hudson's cases go to trial. Judge Hudson did note, however, that while the number of civil cases proceeding to trial has remained consistent over the past few years, there has been a recent increase in the number of criminal trials. 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 conference for hearing of motions in limine and other pre-trial motions.

Judge Hudson recommends that counsel take advantage 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 remains pleased with the bar and the lawyers who appear before him. He said both the criminal and civil lawyers who appear before him are the "top of their profession" and "well-prepared."

Judge Gibney welcomes feedback and wants the members of the bar to have his phone number: 804-916-2870. Specifically, Judge Gibney is interested if any of his procedures or rules make litigation harder on lawyers and their clients than it needs to be. Judge Gibney also welcomes opportunities to get young lawyers into court to argue motions. If there is a motion that could be decided on the papers but would provide a good experience to a younger lawyer, he encourages the members of the bar to call his chambers and to ask if a hearing is possible.

If a discovery motion is filed in Judge Gibney's court, he intends to resolve the dispute through a telephonic conference as soon as possible. He believes a quick resolution to discovery dispute cuts down on attorneys' fees. He also noted that he has not seen a discovery request that was truly "unduly burdensome" or not proportional to the needs of the case.

As far as trial practice, Judge Gibney says the biggest mistake he sees attorneys make at trial is not having an organized presentation of their client's case. Attorneys must have a coherent story for their case, no matter who the client is. Judge Gibney also recommends using the Court's technology for presentation of evidence because the technology can be helpful with key testimony and exhibits. Lawyers should contact Judge Gibney's courtroom clerk to arrange to try out the equipment before a trial or hearing. Judge Gibney cautions against a highly-detailed PowerPoint presentation during arguments, either at trial or hearings, because lawyers have a tendency to simply read the presentation. If PowerPoint is used, the lawyer needs to be able to move quickly within it to address questions posed by the Court, which are unlikely to be in the same order as the lawyer's slides. Judge Gibney also wants the bar to know he has started putting the jury instructions on the screen so that the jury can read along with him reading the instructions.

The Honorable M. Hannah Lauck

Judge Lauck continues to speak highly of our local federal bar, viewing the "Rocket Docket" as striking an appropriate balance between maintaining a swift litigation pace and fostering a prevailing attitude of professionalism from practitioners. The Court nurtures these dynamics through a hands-on approach in which the Court is meaningfully involved in litigation. To that end, Judge Lauck continues to expect both local and lead counsel to attend hearings and pre-trial scheduling conferences. While many out-of-state lawyers are used to participating telephonically in these hearings, Judge Lauck strongly prefers in-person attendance, with telephonic participation being the exception, not the rule.

Judge Lauck understands that flying across the country to attend a brief scheduling conference is a burden and an expense to which non-Virginia counsel may not be accustomed. However, she feels that in a jurisdiction such as the Eastern District of Virginia that typically sets trials to occur a few months after Rule 16 conferences take place, requiring live appearances sets the proper tone early on in the litigation. Aside from affording counsel an opportunity to meet each other face-to-face, this approach also allows counsel to meet law clerks and other Chambers personnel with whom they will be working. In addition, it gives counsel the chance to discuss case-management concerns with the Court, and Judge Lauck finds that face-to-face dialogue is often more transparent and productive in these situations.

As far as recent updates from the Court, Judge Lauck reminds counsel that there are certain changes to the Federal Rules of Civil Procedure set to take effect on December 1, 2018. In connection with the impending national changes, the Eastern District of Virginia has recommended the adoption of several conforming amendments to its Local Rules. Changes to the language in Local Civil Rules 3, 51, 54 and 62 and Local Criminal Rules 12.4, 30, and 49 also will take effect December 1, 2018.

Regarding discovery disputes, Judge Lauck continues to remind counsel of Local Civil Rule 26(C), which requires counsel to serve objections to written discovery within 15 days of service of the discovery requests. She views this local rule as serving two key purposes. First, distinguishing between objections and responses should be a reminder of the obligation to respond substantively to discovery separately from serving any objections a party might have. This requirement discourages the practice of "resting on objections" in a jurisdiction in which efficient discovery progress is critical. Second, the rule forces parties to identify discovery disputes early, which, in turn, should promote meet-and-confer efforts that might eliminate—or at least narrow—objections before the deadline for serving substantive responses.

In the event that counsel are unable to resolve a discovery dispute after good-faith efforts to do so, Judge Lauck largely handles discovery motions herself and, in conjunction with her pretrial conference practice, prefers a collaborative, hands-on approach. In her standard scheduling order, Judge Lauck requires parties to file a "Joint Statement" within 14 days after a discovery motion is filed. The 14-day period is purposeful and is meant to place a limitation on the time the parties have to narrow their disputed issues. The Joint Statement must be submitted in chart form, with the parties detailing and itemizing: (1) each discovery request in dispute; (2) the objecting party's specific objection/answer (along with the factual basis, relevant rule citations, and associated legal support, without "boilerplate" language); (3) the requesting party's response to each objection (with factual and legal support); and (4) a separate column for the Court's ruling. In this Joint Statement, Judge Lauck is encouraging the parties to explain why the discovery a party is seeking matters in that particular case, with one citation that pertains to the specific issue-at-hand—not that merely recites the rule.

In Judge Lauck's experience, the process of jointly creating a chart to illustrate all disputed issues not only saves time and effort associated with a full set of discovery motion briefing but also facilitates compromises between counsel. When counsel step back and think hard about the basis for each discovery request and the basis for each objection, they will often re-think their request/objection and identify alternative requests (or narrowed objections) to which the other party will be more receptive. To the extent disputed issues remain after the Joint Statement is submitted, having all of the information presented in a chart aids the Court in preparing for a hearing and conveying its rulings.

In the rare occasion that a discovery dispute proceeds to a hearing, Judge Lauck encourages counsel to arrange for a client representative to attend. Judge Lauck finds that this practice gives clients a better appreciation for the importance of discovery obligations. Having clients present to hear the Court's perspective—and rulings—can limit future discovery disputes and result in more active client participation in the discovery process.

Regarding motions to seal, Judge Lauck recognizes that certain types of documents or information may be genuinely commercially sensitive to the point that a business would likely be harmed in its competitive position if a public disclosure were made. With that said, it is important for practitioners and clients alike to appreciate that what might qualify as "confidential" under the terms of a protective order does not necessarily meet the standard for sealing under Fourth Circuit

law. Particularly in a jurisdiction like the Eastern District of Virginia (which has had a number of high-profile terrorism cases involving matters of national security with extreme sensitivity), judges will not simply "rubber-stamp" a request for sealing, particularly if the only apparent basis for the request is that public disclosure would be embarrassing to a party. Rather, the material must legitimately qualify for that treatment given the general presumption in favor of the public's access to court records and due process considerations.

Judge Lauck also shared a pointer about written submissions. Generally speaking, she is widely impressed with the caliber of briefs submitted to the Court. Counsel are almost always sensible in the facts, case law, statutes, rules, and other authority that they cite. Although a fine line exists between effective advocacy and not "hiding the ball," she does urge counsel to err on the side of directly addressing adverse case law (particularly Fourth Circuit or E.D.Va. cases) or bad facts. Doing so proactively is far more beneficial than it is risky.

Throughout the litigation process, Judge Lauck is a strong proponent of settlement conferences. Settlement conferences are not designed to force parties to settle but should be viewed as a great way to get parties talking apples to apples. Too often in a particular case, parties cannot see that they are talking about two different issues (i.e., two different elements of a particular cause of action), and settlement conferences often make these differences more apparent to the parties. Additionally, in requiring clients to attend these conferences, the clients must listen to the other side and often develop a deeper understanding of how the litigation process works as well as the various soft costs associated with litigation. Even if unsuccessful, each side is given the opportunity for their best day in court and has a chance to explain the root cause behind the litigation, which often leads to more productive discussions between the parties going forward and narrows the issues in a particular case.

Lastly, Judge Lauck encouraged young lawyers to seek out opportunities to argue at hearings, where appropriate. She has observed that sometimes at hearings senior attorneys will rely on younger attorneys to locate documents and cases. If the younger attorney knows the facts and the case and it makes sense to have them argue, she encourages senior attorneys to consider this option.

The Honorable David J. Novak

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 new 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. According to Judge Novak, this program has worked extremely well and results in a better outcome for most pro se litigants. Judge Novak believes it is a credit to the local bar that so many attorneys have offered to assist with the program, and he encourages more attorneys to volunteer their services.

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.

The Honorable Roderick C. Young

Judge Young is extremely pleased with the Court's pro se mediation project and notes that it has been an extremely helpful initiative. Thus far, the program has achieved at least two of the goals it set out to achieve— involving younger lawyers in the settlement conference process and counseling unrepresented parties through that process. In particular, Judge Young noted the importance of attorneys in explaining to pro se litigants certain legal concepts and procedural aspects. That dialogue increases the likelihood that cases will be resolved at the settlement conference and the Court has experienced greater success in mediating pro se cases as a result of this program.

Judge Young complimented the Richmond bar regarding the role its attorneys play with respect to foreign attorneys and lead counsel. Richmond attorneys provide valuable insight regarding what to expect before the Eastern District, including the pace of civil actions and settlement conferences.

Chambers notices that some lawyers do not take the time to read the Court's orders, including, perhaps most often, his order establishing procedures for settlement conferences. Counsel are encouraged 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). Even when an order appears to be the court's "standard" order, Judge Young sometimes modifies the terms of his standard orders to tailor them to the case.

Overall, Judge Young is impressed with the bar and the caliber of lawyers appearing before him. He applauds the Office of the Federal Public Defender and the CJA Panel for their role in criminal matters. As a zealous advocate of the pro se mediation project, Judge Young is appreciative of the time and effort the bar has devoted to the initiative, noting that attorneys are taking their roles seriously. As attorney participation is critical to this project, Judge Young encourages members of the bar to sign up and attend the Court's February 2019 training session.