

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 several of 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 pandemic challenges, jury trials, settlement conferences and professionalism.

The Honorable John A. Gibney, Jr. – U.S. District Court

Judge Gibney continues to think the bar here in Richmond does a great job and he is always pleased with the professionalism of the bar. He recently had a case elsewhere that made him appreciate the collegiality of the bar here in Richmond. During the pandemic, Judge Gibney notes that the bar has been good about working with the Court and the clerks to get everything set appropriately and amicably.

He continues to encourage counsel to keep up their level of professionalism and collegiality especially because the court is now down a magistrate judge. He encourages parties to work harder than usual to settle cases that can be settled. He thinks the lack of deadlines during the pandemic has helped fuel that situation. If a case is not settling, he encourages parties to contact chambers for suggestions other than a magistrate.

Judge Gibney reports that jury trials in his court will not be significantly different than pre-pandemic times except for where the jury sits. The jury will now sit in the gallery to accommodate appropriate social distancing.

He also reports being happy with the technology that the courtroom possesses which sets them up well for dealing with the social distancing requirements. He said that some Judges are sending out questionnaires to jurors based on coronavirus issues to help relieve strikes for cause upon their arrival for voir dire.

He acknowledges the challenges that all practitioners are faced with during the pandemic and encourages practitioners to continue to adopt measures to help facilitate the movement of cases. For instance, he has had good results with zoom and other video services in conducting hearings and other matters before the court. He is pleased with the bar's quick adoption of these technologies and utilization of them in their practice. Although video has helped with some hearings, Judge Gibney reports being more comfortable with credibility determinations in person. He also requires sentencing and criminal pleas to be done in person as well. However, he has had good experiences with most merit arguments via video.

As can be expected, Judge Gibney reports a decline in many cases in every area of the law Criminal and civil cases are down from where they were last year. Obviously, he reports this is a result of the pandemic and expects those numbers to grow as the courts and lawyers get a better handle on how to deal with the new world of practice.

Finally, Judge Gibney encourages ongoing patience from the bar in the administrative processes given the difficulties faced during the pandemic. He also encourages young lawyers to take on as many general district court cases as possible during the pandemic to keep their courtroom skills sharp.

The Honorable M. Hannah Lauck - U.S. District Court

Judge Lauck focused much of this year's discussion on the major change everyone is dealing with this year – the pandemic and access to the Court. Judge Lauck wanted to emphasize to the Bar that just as its members are struggling with all different aspects of this pandemic, the amount of resources that the District Court Judges and staff have put into making the Court accessible cannot be underestimated. She emphasized the extraordinary work that Chief Judge Davis has been doing to keep the courts running. Chief Judge Davis created a subcommittee, which includes Judge Gibney where they are talking about every issue in every court every week. The Eastern District of Virginia has been ahead of every recommendation by the AO, which is a huge benefit to those practicing in this jurisdiction.

Judge Lauck encourages the Bar to follow the general orders that the Court has been issuing. There have been 22 general orders to date. Because of the hard work noted above, the courts in the Eastern District of Virginia have been able to remain open throughout the pandemic. It has been important to keep the courts open, especially the bankruptcy courts, to allow for any uptick in bankruptcies that are being filed during the pandemic. Judge Lauck could not stress enough how Judge Davis has done a great job at keeping the justice system rolling and anticipating problems as it has been a lot of work to provide access to the necessary technology and put the systems in place.

The Eastern District of Virginia just held their first few criminal jury trials, which went well. Significant work went into finalizing logistics related to social distancing and how to maintain the safety of the jurors, the parties, counsel, and courthouse personnel. Many of the Judges are using written questionnaires to the jurors for voir dire, which have three parts. The first part contains standard voir dire questions. The second part are questions specific to the case. And third, there are questions specific to COVID-19. After the Court receives the questionnaires from the jurors, the Judge and the attorneys have a hearing. Those jurors who can be stricken for cause at the hearing do not need to come to Court. After this initial hearing, the Court will have 20 jurors maximum come to the Court at one time every two hours on selection day. This number is the only number that the Court can socially distance safely, especially in the elevators.

Through this process, jury selection is now a separate day before trial. In order to keep everyone safe, the Court can sit only one jury on any given day. The questionnaires must go out early to build in time for this process, and Judge Lauck has changed her scheduling order for criminal trials to account for this timing. Once the jury trial begins, everyone is provided earphones with three to four channels – one for everyone, one for the Judge and the U.S. attorney, one for the Judge and defense counsel, and one for the Judge and both attorneys. The earphones eliminate the need to approach the bench for sidebars. Once the trial concludes, jury deliberation occurs in a separate courtroom so that the jurors can socially distance.

At any given time, every judge in the Eastern District of Virginia is handling approximately 200 active civil cases and 50 criminal cases. Although the CARES Act has allowed guilty pleas and sentencing to occur via Zoom, Judge Lauck prefers to handle these matters in person to ensure the defendant is provided the right to ask questions. She will hold these hearings via Zoom only if both lawyers and defendant request it. Recently, there has been an onslaught of compassionate release cases due to COVID-19 outbreaks within the prisons, and prisoners requesting to be released because of safety. These cases require the Judges to act

quickly, which has required the Judges to develop a system of how to handle them efficiently. The Eastern District of Virginia is not advancing civil trials ahead of criminal trials. Due to criminal defendants' right to a speedy trial, criminal cases are taking priority. Judge Lauck appreciates the patience that the Bar has had with this process and hopes that civil litigants are understanding. The courts, just like everyone else in 2020, have more logistics and more cases to handle.

Given these circumstances, Judge Lauck wants to remind the Bar that now is not the time to be unnecessarily litigious. She encourages the parties to work together as much as possible to move their cases along and be accommodating to each other, even if the Court is not requiring them to do so. While a few MDL trials have been set for 2022, this timeline is not the goal. The Court continues to set civil trials for 2021. Judge Lauck trusts and encourages the parties to work towards reaching and finding a solution in their pending cases. The Judges believe and trust that the Bar that practices in this Court will do so. The Court would appreciate seeing only issues that the lawyers cannot resolve on their own.

Judge Lauck continues to refer her cases to settlement conferences, which are occurring via Zoom, and will do so on request. Since the Eastern District of Virginia is down a Magistrate Judge, Judge Lauck asks that the parties remain flexible and be patient with any scheduling issues. When Judge Lauck was a Magistrate Judge, she loved the settlement conference process. Judge Lauck values it as very helpful for the parties to see the pertinent issues and develop an understanding for how those issues may potentially play out during a trial. Judge Lauck requests that the parties be mindful of when a case is ripe for settlement and to use the settlement conference tools when they feel they would be best served in a case. Judge Lauck also wants to remind the Bar that a motion to dismiss does not need to be filed in every case – or on every count in a case. Given Fourth Circuit precedent, such motions are rarely granted with prejudice as case law requires amendment be allowed at least once.

In closing, Judge Lauck emphasized how grateful she is to be a Judge in this jurisdiction. The Eastern District of Virginia is a better place to practice and has better practitioners because of it, which is a privilege for all of us. Judge Lauck has been impressed with how many in the Bar are trying to help folks that are pinched over the last few months, from helping schools to obtain resources to volunteering with the election. Judge Lauck encourages the Bar to keep up such fine work and to continue to look for ways to help those in need if you have not already. Judge Lauck is married to a high school teacher and has two kids in college on the roller coaster of remote learning, so she is very familiar with the challenges we have all been facing in 2020. It is important to be gracious to each other in these circumstances – we are in the midst of a global pandemic. A true silver lining of this year has been seeing the ways people have come together, and the more we can help out others while trying to do excellent work helps everyone.

The Honorable Elizabeth W. Hanes – U.S. Magistrate Judge

Judge Elizabeth Hanes was sworn in as the new magistrate in Richmond in June of 2020. She opened her report by expressing her sincere appreciation for the support and collegiality the Bar extended to her during the application and interview process.

Judge Hanes encouraged all litigants to familiarize themselves with the Court's General Orders, available on the website, which provide detailed updates regarding the Court's current

operations and procedures in the midst of the pandemic. These Orders provide helpful information relevant to both civil and criminal cases.

Consistent with the directives issued by Chief Judge Davis, nearly all settlement conferences are being held via Zoom and will continue that way for the foreseeable future. Judge Hanes stressed the importance of the settlement conference, especially in the COVID era, where civil jury trials have been delayed and settlement conferences can serve to move cases along.

With respect to settlement conferences, Judge Hanes emphasized the importance of knowledgeable local counsel; familiarity regarding the speed and intensity of the settlement conference process in the Eastern District of Virginia is vital. She also emphasized ways in which parties can best position themselves for a more productive settlement conference. To that end, Judge Hanes encouraged parties to provide thorough settlement conference memoranda to assist the Court in preparing for the conference. Specifically, she encouraged parties to be frank and open in their memoranda while focusing on case-specific legal or factual issues. Of course, novel issues and issues of first impression may warrant an in-depth analysis.

Judge Hanes also encouraged parties to identify and disclose to the Court—either in their settlement conference memoranda or initial conference—other terms or factors that may impact a party’s ability to reach a settlement. These may include terms or factors that may not otherwise be evident to the Court, such as issues related to insurance coverage or desired non-monetary terms. Judge Hanes also noted that in some instances, where cases are particularly complex or involve multiple parties, pre-mediation calls with each party may be productive. Judge Hanes indicated she would be willing to provide that opportunity if it may assist the parties in resolving the case. Judge Hanes wanted to remind all parties participating in settlement conferences to view mediation as a problem-solving endeavor as opposed to simply an opportunity to advocate for that party’s position. Judge Hanes’ settlement conference order mirrors Judge Young’s, which requires parties to exchange offers before attending.

With respect to her case load, all cases referred for settlement are currently being referred to Judge Hanes. For scheduling purposes, if a case presents a unique issue making a settlement conference ripe at a specific point in the case, Judge Hanes is flexible to the extent Scheduling Orders and other case-related deadlines permit. Parties should feel free to raise those issues when scheduling their settlement conference.

Finally, Judge Hanes is excited about the opportunity for community engagement in her new role. While the present circumstances may limit certain in-person opportunities, she encourages Bar members to continue to offer pro bono services, including serving on the CJA panel and participating in the Court’s pro se mediation program. Judge Hanes noted the existing ways in which the Court engages the community, including hosting student groups and conducting Naturalization ceremonies at off-site locations. Judge Hanes looks forward to participating in these existing endeavors while finding new ways to increase the Court’s involvement with the community. Her (virtual) door is open and she looks forward to interacting with the Bar in her new role.

Due to time limitations, Judge Payne, Judge Hudson and Judge Novak were unable to meet with Administration of Justice Committee members this year.