

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 recognizes that the last 18 months have been challenging for everyone. During the height of the COVID pandemic, Judge Gibney had hearings only in criminal cases, very few criminal trials, and essentially no civil trials. Grand juries were cancelled and there have been no naturalization ceremonies since the pandemic.

As the senior active district judge, Judge Gibney is charged with much of the administrative work attendant to running the Richmond Division. He worked as part of the EDVA COVID response team, through which the judges had to re-think nearly everything they do. In the interests of courtroom safety and social distancing, Judge Gibney reports that judges are utilizing three courtrooms for a trial: the main courtroom for witnesses, lawyers, and the jury; CCTV to a second courtroom where public can observe; and a third courtroom for jury deliberation with cameras blocked. He also reports that the EDVA COVID response team conferred with directors of implicated health districts, who emphasized the importance of social distancing. As a result, juries are not confined to jury boxes. Instead, the jury is placed in the gallery and plexiglass surrounds witnesses and lawyers. As to jury selection, Judge Gibney reports that some judges are using questionnaires that include questions about topics such as childcare and immunocompromised status.

Judge Gibney believes that Zoom benefits the civil bar because it eliminates the requirement that the parties travel, but he is reluctant to hold any hearing in which he must evaluate the credibility of a witness to occur on Zoom. Another downside to Zoom hearings is that in a live hearing, the attorney's physical presence – body language and confidence – is important. Those characteristics are much more difficult to convey on Zoom. Judge Gibney reports that lawyers who do well “live,” do well on Zoom. They are prepared and exhibit focus and brevity. He reports that out-of-town lawyers have the same problems on Zoom as they do during in-person hearings: they can be long-winded, expect continuances, and are not ready to get to the point. Overall, Judge Gibney acknowledges that the bar has done a really nice job of embracing changes and he is interested to see what components of the COVID changes stay post-pandemic.

With regard to case resolution, Judge Gibney states that the best form of ADR is a trial date, in that when the parties set a matter for trial, insurance companies are more inclined to settle.

Finally, Judge Gibney reports that he took senior status on November 1, 2021, at which point his service on the EDVA's COVID response team also concluded. He will not be taking on any

more patent cases or bankruptcy cases, and will be sitting in Norfolk three Fridays a month, all day, to address criminal matters.

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

Judge Lauck kindly shared some updates and observations with the Bar at our annual check-in on behalf of the Richmond Bar Association. COVID-19 has presented unprecedented challenge as the Court worked to balance the important interests of access to the judicial system, and pandemic related safety precautions. Judge Lauck commended the ongoing efforts of the work group at the Court who have continued to stay abreast of CDC guidelines and health updates, while issuing regular standing orders to help the public, court staff, and the Bar keep up to date with courthouse procedures. The efforts have been remarkable and a testament to all involved. As to the COVID working group, Judge Lauck expressed thanks to Chief Judge Davis, Judge Brinkema, Judge Gibney, and Judge Santoro.

The team at the Court continues to have periodic conference calls with health department heads and other informed officials to manage the process and adapt procedures. Ongoing important concerns include processing prospective jurors efficiently and ideally identifying those who cannot serve because of COVID related concerns before summons are issued.

Jury selection procedures to facilitate voir dire with appropriate social distancing takes time, but is manageable. Jury trials continue to typically require the use of multiple courtrooms with video feed to a second courtroom. With speedy trial concerns dictating the pace of criminal cases, restarting civil cases remains a challenge and the pace of civil cases is variable from one judge to another.

Judge Lauck shared some observations about the valuable opportunity for settlement conferences with the Magistrate Judges. The settlement conferences are a very effective way to save money and time as a case works through the litigation process. The presiding judge at the settlement conference will not be making dispositive rulings in the case and is able to accept all manner of information when discussing the case directly with the parties and counsel. Without the strict rules of evidence and procedure, the parties can have candid discussion with the Court, and through the settlement judge, with each other. These conferences are valuable in helping to enlighten clients, crystalize issues, and bring cases to acceptable resolution. Focusing on the core of the case can be a challenge for all litigants, and settlement conferences encourage that process throughout.

The pandemic has seen a significant increase in the use of remote appearance by Zoom and other software platforms at various stages of the litigation process. While the remote video technology is helpful and necessary at times, Judge Lauck noted the benefit of in-person proceedings. The opportunity to meet the litigants, observe nonverbals, and encourage open communication is important and valuable. For example, Judge Lauck prefers not to accept guilty pleas by Zoom if an alternative in-person arrangement is possible.

Judge Lauck shared that the Court is fortunate to have another wonderful group of judicial law clerks this year. The clerks function as a mini law firm with excellent collaboration. Similarly, she complimented the Richmond Bar for the ethos of trust that predominates our bar culture. Judge Lauck encouraged attorneys from all practice areas to get involved in the Bar in order to interact with professionals outside their specific firm and area of practice, to make connections, and to contribute to the important professional work of the Bar.

The Honorable Henry E. Hudson
U.S. District Court

Judge Hudson continues to be pleased with the practitioners in his Court. He says he has seen no problems over the past year and a half with the collegiality or professionalism of the Richmond Bar and encourages members of the Bar to remain steadfast in their commitment to professionalism. He encourages the bar to take advantage of the open door policy at the Eastern District of Virginia and call if they ever have any questions, within the bounds of ethics.

During Covid-19, Judge Hudson said they went through a period of dormancy, but since the resumption of trials, they have gone well. Judge Hudson does warn practitioners to expect to need longer times to try a case. He also stated that the trials are awkward with the restrictions and requires an immense amount of patience from all parties involved. Criminal juries are tried with the jury in the public seating area with the witnesses up in the well and the Judge behind the attorney tables. Civil cases are tried with the jury still in the jury box. When asked if there were ways to correct for the awkwardness in the jury trials, Judge Hudson thought there was not much a lawyer can do until we return to some sense of normalcy given the restrictions necessary to keep everyone safe.

Judge Hudson stated that his handling of hearings has returned to completely in person. He believes the proceedings are more controlled and the proceedings are more effective in person.

He states that the trend of new cases has not changed much in terms of types, but does say federal courts across the country have been inundated with prisoner related litigation for Covid related reductions in sentencing.

As far as the Magistrate Judges, the positions have been filled and the Judges are doing an excellent job administering settlement conferences as efficiently and quickly, in addition to their other responsibilities.

Judge Hudson anticipates that with the adoption of vaccinations and safety measures the Courts will return to normalcy quickly. He has seen that trend over the past year as the administration of Justice has continued to return to normal.

He encourages young lawyers to come observe trials and see more seasoned lawyers try cases. He also encourages young lawyers to take on as much pro bono work as possible to get experience.

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

Judge Elizabeth Hanes was sworn in as a magistrate judge in Richmond in June of 2020. Judge Hanes reports that the last year has been full of changes. One particularly noteworthy and positive change was the addition of Judge Colombell to the bench as a magistrate judge.

At the request of the committee, Judge Hanes explained how the Court's handling of settlement conferences has evolved during the pandemic. At the height of COVID, the Court transitioned all settlement conferences to the Zoom platform. Currently, however, almost all conferences are scheduled to be conducted in-person. Judge Hanes emphasizes that in-person conferences are the expectation because she has learned that although some cases can settle via Zoom, many will only settle through in-person mediation.

Judge Hanes still occasionally receives requests to conduct settlement conferences remotely or to allow some parties to participate via Zoom. A party requesting that a settlement conference be conducted via Zoom should provide the specific reason for the request. In deciding whether to allow remote participation, Judge Hanes looks at several factors, including the current guidance from Chief Judge Davis, current COVID metrics, the complexity of the case, and the specific reason for the request. She also asks the opposing party if they have a position on the matter. Judge Hanes typically holds any request she receives until about six (6) weeks prior to the settlement conference given the changing nature of the pandemic. Because cases benefit substantially from in-person mediation, however, requests for remote settlement conferences are rarely granted. If a request is granted, Judge Hanes advises attorneys to remind clients and pro hac counsel that they should treat the virtual settlement conference as a regular court hearing. All participants should find a location that is free of distractions and be available to appear on camera. Judge Hanes prefers that counsel and litigants leave their cameras on during the conference because it ensures full participation.

Prior to scheduling a settlement conference, Judge Hanes's chambers will ask the attorneys if they have a sense of when the mediation should be scheduled in order to make it most conducive to settlement. The mediation must be held within the court's parameters (typically before summary judgment briefs are filed), but often an early mediation is beneficial. Judge Hanes notes that it is helpful if the parties have discussed the timing of the mediation prior to requesting the settlement conference date. Settlement conferences typically start at 9:30 a.m. and are scheduled for three (3) hours. Judge

Hanes generally has other matters that are scheduled for the afternoon. If a case has not settled in three hours but appears to have potential to settle if negotiations continue, Judge Hanes will allow the settlement conference to continue. However, the settlement process tends to be less efficient in the afternoon because of her other Court obligations. On the day of the settlement conference, Judge Hanes greets the participants in the same room but quickly moves them into their own private rooms to begin the mediation. She does not ask counsel for an opening statement. When asked about how she handles lunch breaks during mediations, Judge Hanes explained that breaking for lunch disrupts the flow of the mediation and is an inefficient use of time. Therefore, she informs the parties that they may purchase food at

the market in the basement of the courthouse and that they may have lunch delivered if they anticipate a lengthy settlement conference.

The Honorable Mark R. Colombell
U.S. Magistrate Judge

Judge Mark R. Colombell was sworn in as the new Magistrate Judge in the United States District Court for the Eastern District of Virginia in Richmond on May 10, 2021. Judge Colombell expressed his appreciation for the courtesy and support from the Bar during his first six months as a magistrate judge. He is enjoying his new role and has appreciated the professional interactions he has had with the local Bar.

Judge Colombell has been impressed and pleased with the level of preparation the parties appearing before him have shown for the settlement conferences he has conducted to date. He encourages attorneys to advise their clients that the settlement conference process can be their “day in court,” because he gives the parties a full opportunity to tell their story and interact with him during the conferences. He believes counsel appearing before him have done a good job managing their clients’ expectations and understanding that the purpose of the settlement conference is to reach a compromise over disputed claims, not an adjudication on the merits. He enjoys the pre-conference ex parte communications he has with counsel, as they provide an excellent opportunity for him and the attorneys to be fully prepared prior to the settlement conferences. He encourages counsel to take advantage of his accessibility prior to the settlement conference so that issues can be identified prior to the actual conference.

Judge Colombell emphasized that counsel should be thoughtful and open with him about barriers to settlement. Specifically, he indicated that there can be timing issues with the settlement conference in terms of parties needing some initial discovery prior to engaging in settlement discussions. He has observed several conferences that occurred too early, and only at the settlement conference did it become apparent that additional discovery was needed to flesh out issues to allow for meaningful settlement discussions. He encourages counsel to be open with him regarding the timing, and the court will work with parties to schedule the conference at the appropriate time. Some district judges include the conferences in their standard pretrial orders, and parties often feel compelled to schedule the conferences as soon as possible. If additional time and discovery are needed, however, he will work with parties on the scheduling of the settlement conference and communicate that to the district judge assigned to the case.

Judge Colombell also expressed appreciation for the University of Richmond project designed to assign pro bono attorneys to pro se litigants for the purposes of their settlement conferences only. This limited representation provides excellent opportunities for attorneys, and especially young attorneys, to participate in the settlement conference process and be exposed to the federal bench. It is also incredibly helpful to Judge Colombell in assisting with settlement conferences involving pro se litigants. He relies on the attorneys’ subject matter expertise, and the attorneys’ role in the process is important.

Judge Colombell reports that his office is able to resolve the vast majority of cases assigned to him for settlement conferences. He also emphasized that he considers himself at the

parties' disposal once the case has been assigned to him for a settlement conference. He encourages attorneys to reach out to him if they feel a second settlement conference is necessary or if they believe he can assist in any way in aiding the resolution of the cases assigned to him. Judge Colombell prefers in person settlement conferences, but he acknowledges that COVID is an ongoing and ever-changing concern. Thus, he is happy to schedule remote settlement conferences via Zoom. He does, however, prefer not to engage in a hybrid process where some parties are present in person and some are remote. He believes settlement conferences are more effective when all parties appear in the same fashion – either all in person or all via Zoom.

Judge Colombell emphasizes that preparation for the settlement conference is key. He encourages attorneys to provide full pre-settlement conference briefs that include an honest assessment of the strengths and the weaknesses of the parties' cases.

In general, Judge Colombell wishes to thank the members of the Bar for their professionalism and diligence in the matters they present to him.