

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 M. Hannah Lauck
United States District Court for the Eastern District of Virginia

Judge Lauck explained that the Court's COVID-19 Committee continues to meet regularly to evaluate the Court's procedures and safety protocols as circumstances evolve. Judge Lauck noted that the Committee continues to follow data and guidance provided by the CDC in evaluating what procedures are necessary at any given time.

Judge Lauck noted that specific COVID-19 protocols utilized for trials may vary based on the presiding judge within the Division, so counsel should make sure they are aware of their particular judge's procedures.

Judge Lauck emphasized that the Court recognizes that jurors are required by subpoena to attend court for jury service and wants jurors to feel safe and comfortable in the courtroom. Judge Lauck explained that, among other measures, she continues to use a modified jury selection procedure that was developed earlier in the pandemic. The Court holds jury selection the day before trial begins. Jurors arrive in groups of 20 in separate time slots to minimize the number of people in the courtroom at any given time during voir dire. Judge Lauck noted that the process has been well-received by both jurors and the parties.

According to Judge Lauck, the Court's docket remains busy, but the Court has worked through its COVID-19 backlog. Criminal trials continue to be scheduled in accordance with the Speedy Trial Act, and civil cases are typically set eight to ten months from the date of initial filing, consistent with the Court's historical practice.

Judge Lauck noted that hearings are typically conducted in person, rather than by Zoom or Webex. Judge Lauck emphasized that observation of posture, body language, facial expressions, and other non-verbal signals can be lost over the video conference format.

Judge Lauck discussed that the requirement of attendance of lead counsel at the initial pre-trial conference remains important, as it provides out-of-town counsel with an introduction to the Court and an opportunity to meet Court personnel.

While hearings will be called, if necessary, Judge Lauck typically decides motions, including motions to dismiss and motions for summary judgment, without a hearing based on the briefs submitted by the parties. Parties can contact chambers to request a hearing if they wish for a junior lawyer to have an opportunity for oral argument, but such requests cannot always be accommodated due to competing demands on the Court's docket.

Judge Lauck observed that parties are typically able to resolve discovery disputes through counsel without the need for court intervention. In circumstances where disputes remain, Judge Lauck requires parties to submit a joint filing. Judge Lauck noted that this procedure has worked well and allows the parties to narrow or even resolve their discovery issues before bringing them before the Court for a ruling.

Judge Lauck observed that most civil matters are referred to a magistrate judge for settlement conference, which continues to be an effective mechanism for resolving cases. Judge Lauck noted that the process provides the parties with their day in court while also allowing information to be considered that might not be admissible if the case were to proceed to trial. Judge Lauck also complimented the bar's pro bono program with the University of Richmond School of Law to provide representation for *pro se* litigants during settlement conferences, noting that the program has been very successful.

According to Judge Lauck, the local bar sets a high standard for professionalism, which is appreciated by the Court. Judge Lauck also emphasized the key role that local counsel plays in guiding out-of-town counsel through the process and educating them on the customs and expectations in the Eastern District of Virginia. Judge Lauck noted that the Judges of the Court welcome feedback from the bar.

The Honorable David J. Novak
United States District Court for the Eastern District of Virginia

Judge Novak is proud of how the Court has responded and adapted to evolving concerns related to COVID-19. Even during the more restrictive period of the pandemic, Judge Novak presided over eight jury trials. Judge Novak has also presided over several jury trials thus far in 2022. Judge Novak reports that the Court has worked through its backlog of cases that were postponed due to COVID-19.

Judge Novak explained that the Court instituted certain new procedures to address fair trial concerns that might arise because of COVID-19. While some of those procedures are no longer used as COVID-19 restrictions have decreased, Judge Novak continues to conduct jury selection in both criminal and civil matters on the day before trial rather than the morning of the first day of trial. Judge Novak reports that the Court also continues to utilize a modified voir dire process that entails bringing in sixteen potential jurors at a time and seating them in the public area of the courtroom rather than the jury box. After asking certain general questions of the pool, Judge Novak calls individual candidates to the witness stand for further questioning. Judge Novak reports that this has proven to be an efficient process that also serves to limit the number of potential jurors in the courtroom at any one time. Judge Novak also explained that the Court continues to utilize technology for side bars to promote social distancing. Instead of side bars at the bench, counsel are able to use headsets with microphones attached to them, which allows counsel to communicate directly with the Court and with each other outside of the hearing of the jury.

Judge Novak no longer uses video conferencing, such as Zoom or Webex, to conduct hearings now that in-person sessions are possible again. Judge Novak emphasized the importance of the in-person setting for observing the parties and witnesses during court proceedings. Judge Novak will utilize telephone conferences for certain matters such as scheduling conferences.

In criminal matters, Judge Novak explained that, after the magistrate judge has conducted the arraignment, Judge Novak typically gives the prosecution and the defense the choice of either setting a trial date right away or spending 30 days reviewing the evidence to determine whether a trial will be necessary.

As for civil cases, Judge Novak reported that most actions are set for trial within eight to ten months from the date of filing. Most civil matters continue to be referred to a magistrate judge for settlement conference, which is an integral part of the efficient functioning of the Court. Judge Novak was complimentary of the pro bono program developed by the bar and the University of Richmond School of Law to provide representation for *pro se* litigants during settlement conferences.

Judge Novak typically decides dispositive motions, such as motions to dismiss and motions for summary judgment, on the papers filed by the parties. If, however, there is an issue that is not sufficiently addressed by the briefs, Judge Novak may schedule oral argument. Should a party wish to have a hearing to allow argument by a more junior lawyer, the Court will consider such request but may not always be able to accommodate it due to scheduling concerns. Judge Novak pointed out that the pro bono settlement conference program is another excellent way for younger lawyers to gain experience and to meet Court personnel.

Regarding the use of technology in the courtroom, Judge Novak encourages counsel to meet with the courtroom deputy before trial to make sure that counsel understands how to use the Court's technological equipment and that counsel's equipment and data will work with and can be displayed by the Court's equipment.

During the final pretrial conference, Judge Novak issues rulings on all outstanding pretrial motions.

Overall Judge Novak is very complimentary of the local bar and its professionalism and competence. Judge Novak did note, however, that he has occasionally observed instances where counsel to parties in discovery disputes have not met the letter or spirit of their obligation under Local Civil Rule 37(E), which requires counsel to meet and confer "to decrease, in every way possible the filing of unnecessary discovery motions." Judge Novak requires that parties file a joint pleading for discovery disputes. This process is intended to encourage counsel to work together to determine the specific issues in dispute—and hopefully to resolve or narrow the issues that need attention from the Court.

The Honorable Roderick C. Young
United States District Court for the Eastern District of Virginia

Having begun his judicial service in Richmond as a magistrate judge, Judge Young recently relocated from the Norfolk Division back to the Richmond Division as the newest Judge in the Division. Drawing on his recent experiences in Norfolk and past experiences in Richmond, Judge

Young is highly complementary of the local bar—specifically noting their preparedness, both on the civil and criminal side.

In discussing the relationship between the bench and bar, Judge Young emphasized the importance of overall preparedness and solid written work product. In particular, Judge Young stated that counsel should always cite to and address any authority that may cut against their client's position. Given that the Court frequently relies on the parties' written submissions, incorporating and distinguishing such authority greatly assists the Court in assessing the issues and making its decisions.

As has been the case over the last couple of years during the COVID-19 Pandemic, civil trials have not been as frequent, but are beginning to pick up, and Judge Young is currently scheduling trials approximately six (6) months out. Notwithstanding the slower docket of civil trials, civil pre-trial matters continue to progress steadily and all trials, and almost every hearing, is being conducted in person. The limited exception is that status conferences are and will continue to be conducted by Zoom.

Important to Judge Young in the pre-trial schedule is attorneys utilizing the time to meet and confer. In many instances, Judge Young will require attorneys to meet and confer for longer periods of time before having a hearing or issuing an order on a specific topic. For example, attorneys should spend extra time conferring over objections (narrow down objections as much as possible to avoid headaches and streamline what the Judge needs to focus on and decide) and other pre-trial matters, including the filing of joint jury instructions, which Judge Young requires by the parties. With respect to any discovery disputes, like other Judges in the District, Judge Young refers disputes to the magistrate, but as a whole, noted the Division prefers parties work through their discovery disputes. Finally, in advance of a trial, Judge Young will conduct the final pre-trial conference to ensure his familiarity of the facts and any potential issues.

Lastly, with the frequency of civil matters settling in advance of trial, Judge Young still requires a settlement conference to be scheduled and refers each settlement conference to the magistrate to perform. However, Judge Young does miss conducting the conferences and may participate in settlement conferences in the future. Even if the parties schedule a private mediation, Judge Young will set a settlement conference shortly following the parties' mediation in the event the mediation is unsuccessful.

It is also important to note that younger lawyers can become involved in the Pro Se Mediation Project. The Project was developed by Judge Young and Judge Novak and affords younger lawyers an opportunity to hone their advocacy skills. Anyone interested in this program should contact the Federal Bar Association.

The Honorable Robert E. Payne
United States District Court for the Eastern District of Virginia

Judge Payne is extremely complimentary of the Richmond Bar and stressed that we are blessed with a good bar and is grateful for the RBA's service and the work it is doing, particularly sharing observations from our local judges. Judge Payne stresses the importance of the Rules of Civil

and Criminal Procedure, and specifically the importance of the Local Rules for the Eastern District of Virginia. The Local Rules are designed to streamline various issues, remove delays, and move cases toward resolution. Of course, the Judges, when drafting the Rules, cannot envision every scenario or how a Local Rule may negatively impact parties.

Judge Payne requests that when a Local Rule is causing issues for attorneys, we should take the time to explain the issues with that Rule and the practical effects in a letter submitted to the Court in order for them to review the issue(s). Similarly, when the Court issues proposed, or draft, Rules, it is important to comment on them so that the Court understands potential problems the Rule may create. The Court appreciates knowing what areas of the Local Rules are causing problems.

In reviewing the Local Rules, Judge Payne noted common occurrences where attorneys fail to take into consideration the potential outcomes from the Local Rules. As an example, he noted regular difficulty amongst parties with Local Rule 7(E), which provides that a motion shall be considered withdrawn if it is not set for a hearing, or arranged for the motion to be decided on the papers, within thirty (30) days after the date on which the motion is filed. Judge Payne does not like making these rulings and does not like ruling on technicalities, but the Local Rules are in place to ensure a resolution takes place in a timely manner. Additionally, Judge Payne has noted an uptick in legal assistants calling chambers asking what a specific Local Rule means. Not only is chambers not permitted to provide legal advice, but if an attorney has a non-administrative question, he or she should be the one responsible for solving. Consequently, when appearing before Judge Payne, best practice is to have problems, to the extent they are unable to be resolved, put into a motion for the Court to resolve.

Overall, Judge Payne remains pleased with how parties are handling their matters, in particular the Rule 26(f) conferences. From August 2021 to August 2022, Judge Payne had no civil trials, and while COVID-19 slowed down everything and trials were primarily limited to criminal matters, the upcoming year is showing a return to normalcy. Judge Payne is now holding motions hearings in person, and while preference is for in person hearings, Judge Payne does not object to a hearing on Zoom or other court approved virtual platform. The primary requirement for a virtual hearing, however, is that the Court's IT department must confirm all systems are compatible and in good working order. To the extent you believe a virtual hearing is necessary or appropriate, Judge Payne recommends contacting the Court's IT department in advance of the virtual hearing request.

Lastly, Judge Payne provided a reminder to all lawyers that with the accessibility of technology comes constant demand on attorneys. The practice of law is not convenient to instant answers and it is ok to say "I'll get back to you."

The Honorable Mark R. Colombell
U.S. Magistrate Judge for the Eastern District of Virginia

Now well into his second year as a Magistrate Judge in the United States District Court for the Eastern District of Virginia in Richmond, Judge Mark R. Colombell once again expressed his appreciation for the courtesy and support from the Richmond Bar. He believes that the members of the Richmond Bar who appear before him continue to earn high marks for professionalism, diligence, and preparation.

Settlement conferences continue to occupy the bulk of Judge Colombell's time given the amount of work invested in the process by both the Court and counsel, and given the important role that the settlement conferences play in resolving matters pending before the Court. The level of preparation of the parties appearing before him is critical, and has remained impressive. He strongly encourages attorneys to advise their clients that the settlement conference can be their "day in court," allowing them ample opportunity to tell their story and interact with him during the conferences. Every settlement conference has its own rhythm, with the purpose to reach a compromise over disputed claims, and not to adjudicate the claims on their merits. According to Judge Colombell, members of the Richmond Bar have done a good job of managing their clients' expectations, and making certain their clients and outside counsel understand how the process will be conducted. The pre-conference *ex parte* communications that Judge Colombell receives from counsel remain an important part of the process. Judge Colombell encourages counsel to take advantage of his accessibility prior to the settlement conference so that issues can be identified prior to the actual conference. He also encourages counsel to be mindful of the Court's deadlines, the submission of papers, and the need to exchange offers prior to the settlement conference.

Judge Colombell emphasized that counsel should be candid with him about any potential barriers to settlement. For instance, the parties may believe that the matter is not ripe for settlement, that some initial or additional discovery is needed to flesh out various issues, and that some discovery is needed before the parties can engage in fulsome, meaningful settlement discussions. If additional time is needed, Judge Colombell will work with the parties on the scheduling of the settlement conference, and then communicate that to the district judge assigned to the case.

As for attendance of the parties at any settlement conference, Judge Colombell strongly prefers that everyone appear in person. According to Judge Colombell, bringing everyone together and having them sit across the same table greatly assists both the Court and the parties in achieving a potential resolution. In the event there is a need for flexibility, Judge Colombell continues to schedule some settlement conferences that occur remotely via Zoom. When settlement conferences are conducted remotely, Judge Colombell prefers not to engage in a hybrid process where some parties are present in person and some are remote. Rather, 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 reported that his office has been able to resolve most cases assigned to him for settlement conferences. As for matters that are not resolved during any settlement conference, Judge Colombell strongly encourages the parties to keep their settlement discussions afloat and not to consider trial as the only option. The parties should reach out to Judge Colombell if they believe a follow-up 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 also expressed his continuing 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 – especially young attorneys – to participate in the settlement conference process and to be exposed to the federal bench. Judge Colombell relies on the pro bono attorney's subject matter expertise, and considers their representation to be very helpful in resolving matters that involve *pro se* litigants.