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What Litigators Must Know About Va.'s 'Rocket Docket'

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Do not be lulled into a false sense of complacency by the formality, civility and, in some cases, old-fashioned Southern charm, of the United States District Court for the Eastern District of Virginia (EDVA). Cases usually move with lightning speed, handled by efficient, polite, but no-nonsense jurists and courtroom deputies. The average time from filing a civil case to trial is approximately 11 months, with 2012 constituting the fastest trial docket in the country for the fifth straight year! Trial dates are usually hard and fast, and continuances are difficult to obtain. And this court's divisions (Alexandria, Richmond and Norfolk/Newport News) try a disproportionate number of cases. Nowhere is the old adage "trial dates settle cases" more apt. If the case doesn't settle, it will go to trial. Welcome to the "Rocket Docket."

Every jurisdiction has a unique personality, and the EDVA is no different. Lawyers stand when addressing the court, from behind the podium, and are well advised to introduce themselves when speaking, even if they have appeared before a particular judge dozens of times. The clerks' offices are helpful, knowledgeable and often remember your name. But make no mistake about it, behind the somewhat traditional veneer lies the fastest — or one of the fastest — dockets in the country, year after year.

By the Numbers

Let's start with some statistics. The Administrative Office of the United States Courts issues its Federal Judicial Caseload Statistics (FJCS) every year after the Judicial Conference meets in March. According to the latest data (from fiscal year 2012), the median time interval to try a civil case in the Eastern District of Virginia is 11.3 months — the fastest in the country yet again. The national "silver medalist" is the District of Wyoming at 13.1 months. The "bronze" goes to the Western District of Virginia at 13.7 months. Looking for "justice delayed"? Try the Western District of New York, with an average time to trial of 54.7 months. With good reason, the EDVA is a venue of choice for sophisticated litigants with venue options looking for efficient resolution of disputes. Cases are quickly set for trial, and then are settled or tried.

The statistics above provide some metrics on the average time to trial. Because most cases are not tried, however, the average time to disposition is even shorter. And the EDVA is one of the fastest for that also. The FJCS statistics for 2012 reveal that the national median interval for disposition of a federal civil case is 7.8 months, but for civil cases in the EDVA the average is 5.2 months (tied for third fastest in the country). Bringing up the rear, according to the data, are the Eastern District of Arkansas at 45.3 months and the Middle District of Florida at 38.4 months.

Whether a case is likely to be tried or, like most, resolved before trial, the EDVA is one of the speediest jurisdictions in the country.

The Divisions

The divisions of the Eastern District of Virginia are Alexandria, Richmond, Norfolk and Newport News, forming a crescent on the map, sweeping from Alexandria in the north, through Richmond and Newport News, to Norfolk in the southeast. Alexandria is across the Potomac River from Washington, D.C., and the division includes such Northern Virginia counties as Arlington and Fairfax and others. The Richmond Division, in central Virginia, encompasses the cities of Richmond, Petersburg and Fredericksburg, as well as many adjoining counties. The Newport News Division is composed of the cities of Newport News, Williamsburg and Hampton and several surrounding counties. The Norfolk Division includes the cities of Norfolk, Virginia Beach (the commonwealth's largest city), Portsmouth, Suffolk and Chesapeake and nearby counties. Although Newport News is a separate division, the same judges sit in both the Norfolk and Newport News divisions. And, frequently, motions in a case pending in Newport News are heard in Norfolk.

Practice Tip: It may seem like basic advice, but be sure to check where the hearings will be held before making hotel reservations for counsel and clients!

Just as each division may have its own rules or procedures, so too do the judges of the EDVA. A number of EDVA judges have individual rules of practice and many of the senior judges are very active handling civil cases. In addition, the magistrate judges also handle civil motions or cases, with consent, and are effective case mediators, known to stay after midnight to mediate cases to resolution when justified.

Current EDVA judges include Alexandria Judges Leonie M. Brinkema, Gerald Bruce Lee, Liam O'Grady and Anthony J. Trenga; Senior Judges James C. Cacheris, Claude M. Hilton and T.S. Ellis III; and Magistrate Judges T. Rawles Jones Jr., Theresa C. Buchanan, John F. Anderson and Ivan D. Davis. In Richmond, the judges include James R. Spencer, Henry E. Hudson and John Gibney; Senior Judge Robert E. Payne; and Magistrate Judges M. Hannah Lauck and David J. Novak. In the Norfolk and Newport News Divisions, the judges include Judges Rebecca Beach Smith (Chief), Raymond A. Jackson, Mark S. Davis and Arenda Wright Allen; Senior Judges Robert G. Doumar and Henry Coke Morgan Jr.; and Magistrate Judges Tommy E. Miller, Douglas E. Miller, Lawrence R. Leonard and William T. Prince.

Each of the divisions pulls from unique jury pools. Alexandria could conceivably have the most diverse and liberal jury pool; and the more southern districts (Newport News and Norfolk) are often more moderate or conservative. Alexandria will likely see a good share of civil servants; Newport News, its share of shipyard workers; and Norfolk, its fair share of military family members. Beyond the likely jury pool, each of these areas has many unique characteristics that can be identified by capable local counsel.

Patent cases are assigned by rotation throughout the district, no matter what division they are filed in. Other civil cases are assigned randomly to a judge within the division in which the case

is originally filed. In other words, a patent case filed in Alexandria may end up in Norfolk, or vice versa. Therefore, when bringing a patent case in the EDVA, it is often helpful to retain a firm with offices in Northern Virginia, Richmond and the Norfolk/Newport News areas to ensure coverage and familiarity.

Although speed and efficiency are emphasized in all divisions of the EDVA, there are significant differences among them. Two notable differences concern the procedure for setting trial dates and handling motions. In Alexandria, for instance, trial dates are set at a final pretrial conference after discovery has been completed. By contrast, in Norfolk, Newport News and Richmond the trial dates are set at the initial pretrial conference just weeks into the case. Motions are also handled differently. In Alexandria, there is a Friday motions day when a motion must be noticed and set by counsel. However, in Norfolk, Newport News and Richmond, motions must be cleared and set on mutually available dates with the docket clerk.

Local Rules

If you are practicing in the EDVA, read the local rules, and then reread them — good advice even for longtime practitioners. There are many traps for the unwary, some nuanced and some not so nuanced. The local rules can be read at <http://www.vaed.uscourts.gov/localrules/index.html>.

Some rules of particular interest:

- Local Civil Rule 7 is titled “Pleadings–Motions–Continuances–Orders.” Upon examination of Local Civil Rule 7, some docket control measures of the EDVA become immediately apparent. Local Civil Rule 7(G) states that continuances will not be granted by “mere agreement of counsel.” Continuances require the court’s finding “good cause” and, as a practical matter, are disfavored in the EDVA. Likewise, in Local Civil Rule 7(I), the court expressly states that extensions of time related to motions “will be looked upon with disfavor.” Except for limited exceptions, Local Civil Rule 7(F) requires that a brief be filed with every motion. While in some cases the brief and motion can be combined, this rule also serves to expedite matters by bringing issues to a head earlier. Opening and responsive briefs are limited to 30 pages. Finally, pursuant to Local Civil Rule 7(E), unless modified by a judge’s individual rules, a motion is deemed “withdrawn” if it is not set for hearing, or if other arrangements are made for it to be heard without a hearing, within 30 days of filing.

Practice Tip: It is critical to confirm with the division clerk whether the cover page, table of contents and table of cases are included in the 30-page limit for briefs, as rules may vary by venue.

- Local Civil Rule 16 deals with the “Pretrial Conference” and states that this conference is to be set “as promptly as possible after a complaint or notice of removal has been filed.” At this conference a clerk usually sets dates for completion of discovery, the final pretrial conference and “whenever practicable, the trial date.” As mentioned above, in Alexandria, a trial date is not set at this point, while in Norfolk, Newport News and Richmond, it usually is. The rule goes on to warn that the “parties and their counsel are bound by the dates specified in any such orders and no extensions or continuances thereof

shall be granted in the absence of a showing of good cause.” In other words, when the parties agree to key dates, be sure that all required counsel, clients and witnesses are able to meet the schedule.

- Local Civil Rule 26 pertains to “Discovery and Disclosure.” This important rule amplifies the requirements of Fed. R. Civ. P. 26(f) and provides additional information regarding timing of pretrial events. For instance, requirements regarding objections to discovery are frequently overlooked by counsel who do not regularly practice in the EDVA. Local Civil Rule 26(C) provides that all objections to interrogatories, requests or applications under Fed. R. Civ. P. 26 through 37 “shall be served within fifteen (15) days after the service of the interrogatories, request, or application.” This surprises some litigants because the discovery responses are still due in 30 days. The EDVA judges and magistrate judges will frequently overrule any late objections when addressing discovery disputes. Likewise, objections must be “specifically stated,” a rule that is often relied upon to overrule boilerplate or more general objections.
- Local Civil Rule 30 pertains to “Depositions–Expenses–Summaries–Reviewing Depositions.” This rule requires a party or representative of a party who files a civil action in the EDVA to appear in the division in which a case is filed for a deposition. So too for a counterclaimant, cross-claimant or third-party claimant. But, importantly, a foreign defendant (who is not one of the above) generally is not required to appear in the district for a deposition. Moreover — and consistent with this court’s efforts to expedite resolution — Local Civil Rule 30 provides that eleven days’ notice is sufficient as a “general rule” to produce a witness for deposition within the continental United States.
- Local Civil Rule 37 concerns “Motions to Compel and Sanctions.” Counsel are required to confer — and be able to certify that a good faith effort was made to resolve disputes — before bringing any discovery motions. Generally, all discovery motions must be briefed. And after the judge rules on a discovery motion, if no other deadline is imposed, “any answer, production, designation, inspection, or examination required” shall be completed within eleven days. When justified, the court does not hesitate to employ sanctions.
- Local Civil Rule 56 addresses “Summary Judgment.” Generally, motions for summary judgment should be filed at the close of discovery while still allowing the court time to rule on the motion(s) prior to the start of trial. This may allow a period of only a week or two for the filing of such motions. Motions must contain a separate listing of purported undisputed material facts (complete with citations to evidence) that support summary judgment. Parties opposing summary judgment must specifically controvert each alleged undisputed fact with evidence, or the facts are deemed admitted. Parties frequently make missteps here, so follow the rule carefully. Unless the court says otherwise, each party may file one — and only one — motion for summary judgment.

The above are just some examples of the nuances of the EDVA Local Rules. Many others can be found in a close reading of the rules, and the latest division-specific or judge-specific information, including “Civil Motions Procedures,” should be checked at the EDVA website (<http://www.vaed.uscourts.gov/>).

Conclusion

There is no question about it — the Eastern District of Virginia is one of the fastest federal district courts in the country. This makes the court very popular for knowledgeable parties with venue options seeking a quick and more efficient resolution of disputes. A case that takes eleven months to try in the EDVA should be much less expensive to litigate — even at warp speed — than a similar one that takes 28 to 54 months to try in one of the four district courts of New York. Plus, New York hotels are more expensive. Whether as plaintiff or defendant, there can be advantages to litigating in the EDVA if both the party and counsel are properly prepared. Remember to buckle your seatbelts!

Additional Practice Tips

- If a party wants the fastest trial in the East (West, North or South), file in the EDVA.
- Consider hiring lead or local counsel with substantial experience in the district and division concerned.
- Read the local rules, reread the local rules and re-reread the local rules.
- Develop and implement a litigation plan early; the plaintiff before filing, the defendant immediately thereafter.
- Promptly issue litigation holds and identify electronic discovery issues.
- Issue discovery immediately, watch the time limits and move to compel promptly, if necessary.
- Take all dates in pretrial orders seriously and ensure all needed counsel and witnesses are available, because once set, the trial date is generally firm. Retain experts promptly, and note that local rules and practices require disclosure and reports earlier than in most other districts.
- Execute your discovery plan quickly and efficiently (watch the limitations on depositions).
- Be prepared to file your summary judgment motion at the close of discovery.
- Come prepared at the final pretrial conference with all stipulated facts, witnesses, exhibits and objections; with sufficient copies of all materials; and be ready to argue all motions in limine.
- Be prepared for trial, be prepared for a quick voir dire and be prepared for the plaintiff to put on its first witness often by noon of the first day.
- Have witnesses at the courthouse if you expect them to testify that day; don't leave witnesses "on call."
- If the case settles, notify the court immediately, or jury costs may be assessed against your client.

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