

# Law360

June 17, 2014

## Still The Fastest Justice Anywhere

by Robert M. Tata



The numbers have been crunched and we have a winner! The United States District Court for the Eastern District of Virginia — known nationally as the “Rocket Docket” — had the fastest trial docket in the country in 2013. Once again. For the sixth year in a row. The median time interval to trial for the 12-month time period ending March 31, 2013, (the most recently released data) is 11.1 months. That’s 11.1 months from the filing of the complaint until the matter was tried and concluded. That’s compared to a nationwide average of 23.8 months to try a case.

The EDVA is the fastest once again.

### By the Numbers

Let’s start with the data. 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 (ending March 31, 2013) the median time interval to try a federal civil case in the Eastern District of Virginia (Alexandria, Richmond, Norfolk and Newport News) is 11.1 months (compared to 12.9 months for this time period last year). The national “silver medalist” goes to the Western District of Virginia (with court locations from Charlottesville, west to Big Stone Gap, Virginia) with a median time of 12.0 months. There was a tie for the bronze medal this year between the District Court of Hawaii and the District Court of Wyoming at 15.6 months.

The absolute slowest court in the country to try a case? For the second straight year, the Western District of New York clocks in at last, reporting an astounding 67.1 months to try a case — even slower than last year, and almost three times the national average and about six times as long as it takes in Virginia’s Rocket Docket. The District Court of the District of Columbia is second to last with a median time interval to trial of 43.5 months — about twice as long as the national average. Other slowpokes include the District Court of Rhode Island (40.4 months), District Court of Utah (38.8 months), and the District Court of Connecticut (37.9 months).

The statistics above concern average time through trial. But because most cases aren’t tried, the average time to “disposition” is usually shorter. The FJCS indicate that the national median interval for disposition of a federal civil case was 8.4 months (slower than last year’s 6.8 months). But the average time to disposition in the EDVA in 2013 was 5.0 months (even faster than last year’s 5.4 months). By this measure, too, the EDVA was the fastest docket in the country in 2013. Close runners-up include the Southern District of Florida (5.2 months), the Central District of California (5.4 months), and the District of Minnesota (5.4 months).

The FJCS tell us the busiest (and sleepest) federal district courts for civil cases as well. The busiest include the Eastern District of Pennsylvania (12,617 cases, more than the entire Fourth Circuit, likely due to an enormous asbestos docket), the Central District of California (12,112 cases), and the Northern District of Illinois (8,741 cases). The sleepest include the District Court of Wyoming (213 cases), the District Court of North Dakota (159 cases), and, for the

adventurous, the District of the Northern Mariana Islands (29 cases) or the District of Guam (26 cases).

### **What Fuels the “Rocket Docket” Today?**

Current judges trace the origins of the Rocket Docket to Judges Walter E. Hoffman in Norfolk and Albert V. Bryan Jr. in Alexandria. But Judge “Beef” Hoffman left the bench after serving for over 40 years when he passed away in 1996. And the EDVA Rocket Docket remains the fastest trial court in the land. What fuels the “Rocket” today over 50 years after the reputation was first earned? We asked some of the judges.

There is no doubt that EDVA judges embrace the maxim “justice delayed is justice denied.” Some trace the origins of this maxim to the Magna Carta almost 800 years ago in 1215. But whatever the origins of the maxim, the judges of the EDVA put it in practice today. The sense is that “deadlines resolve cases,” that by keeping the pressure on the litigants and counsel, cases will either settle or be tried in a timely manner. But that is a philosophy. What practices actually keep the EDVA rocking?

Two keys to the continuing efficiency of the EDVA Rocket Docket are the Rule 16(b) Scheduling Order and the effectiveness of the senior judges and magistrate judges. For instance, the Rule 16(b) procedure in three divisions is that shortly after the parties are at issue (an answer has been filed) they meet with a docket clerk and set the case for trial. The trial date will ordinarily be set approximately seven months from the scheduling conference, which is likely about nine months from the initial filing of the suit. In addition to the early setting of the trial date — which is not easily continued — numerous other deadlines are set at the scheduling conference, including discovery and expert deadlines. The early trial date, meaningful deadlines and rare continuances combine to keep the docket moving. The other division has similar scheduling mechanisms to set early trial dates.

But the senior judges and magistrate judges also are a key to the Rocket Docket’s speed. Many of the EDVA senior judges continue to take full or substantially full dockets, which helps ease the pressure. And the district judges routinely refer discovery disputes to the magistrate judges. Most magistrate judges will quickly schedule a hearing and make rulings, often from the bench. EDVA magistrate judges do not hesitate to make tough calls, to call the proverbial “balls and strikes.” If a party missed the Local Rule 26(C) requirement that objections be made in 15 days (as opposed to when the discovery is due), on a motion to compel, the magistrate judge may very well overrule all late objections. But whatever the ruling, it is likely to be made quickly, keeping the case from bogging down in interminable discovery disputes. The magistrate judges’ effectiveness, availability and willingness to ride heard over the discovery process is key.

Another point should be made. While it doesn’t increase the speed of trial — since there’s no trial in such a case — the EDVA’s willingness to timely dismiss cases on motions to dismiss or motions for summary judgment keep the statistics for disposition of “total cases” remarkable low. This year the median time interval for resolution of all cases was a lightning fast five months in the EDVA, also fastest anywhere. The fact that the judges in the EDVA will often rule on such motions in a month or so also contributes to the speed of the overall docket.

In last year's article, we discussed in some detail the EDVA divisions, including Alexandria, Richmond, Norfolk and Newport News, and some of their nuances. These cities form a crescent on the map sweeping from Alexandria in the D.C. suburbs, through Richmond and Newport News, to Norfolk near the Atlantic Ocean in the southeast. We emphasized then, as we do now, that when practicing in the EDVA it is critically important to read and know the local rules, which are [available here](#). Each division and judge may also have some written and unwritten local rules that are known to local practitioners. An outline of specific practice tips and the key local rules are included in our prior article.

### **Patent Practice in the EDVA and the “Patent Wheel”**

The fact that the EDVA is the fastest trial docket in the country is not lost on parties and counsel seeking speedy trials in patent and other high stakes intellectual property matters where the parties have a choice of venue. For instance, in 2008 there were 67 patent cases in the EDVA. By 2013, that number more than doubled to 170 patent cases. More and more patent cases are coming to the EDVA likely because of its speedy resolution. That said, a review of the docket will illustrate that the EDVA judges will not hesitate to transfer cases to a more appropriate venue when appropriate.

Patent cases, often with multimillion dollar stakes and additional procedural requirements, take more court resources. And while electronic filing has created significant efficiencies, court resources have been drawn down by budget cuts. For instance, the Norfolk Division had 11 case managers in 2008. The number of Norfolk case managers was down to five by 2013. Patent cases also require additional judicial resources to deal with Markman hearings and often multifaceted summary judgment motions. These factors — coupled with the court's speed of resolution — create a strain on the system.

That strain is particularly acute in the Alexandria division. As a District of Columbia suburb, many national law firms with D.C. offices can conveniently file patent and other cases in the Alexandria Division of the EDVA. Not surprisingly, many more patent cases are filed there than in Richmond and Norfolk. The judges of the EDVA have a mechanism to address the disproportionate filing of cases and it is called the “patent wheel.” The EDVA patent wheel is a system whereby the patent cases filed in Alexandria are transferred on a rotating basis to other divisions within the district, meaning Richmond or Norfolk. In this way, the judges share the load. And as a result, patent litigants filing in the D.C. suburbs of Alexandria often find themselves litigating in Richmond or Norfolk, Virginia, about 100 and 200 miles away from Alexandria respectively. Each of these courts, of course, have their own judges and specialized procedures.

The EDVA does not have a published set of patent rules. While there were discussions several years ago about creating rules and/or a patent case scheduling order, nothing was officially adopted. Some of the judges, however, have incorporated some of those ideas in their own rules or practices or even their own patent pretrial order. For instance, while the trial is usually set approximately seven months from the initial pretrial conference in a typical case in several divisions, some EDVA judges have been allowing trials to be set approximately nine months

from the IPTC in patent cases in acknowledgement of the additional time often required to address Markman hearings. At this point, many of the judges still have their individual procedures and it is best to consult with local practitioners once a judge is assigned to determine that judge's patent practice.

Another factor that eases the strain of the high patent case load in the EDVA is the willingness of certain EDVA senior judges to take patent cases. Senior judges have flexibility to not take certain cases. And many senior judges may prefer not to take death cases, or patent cases, or other cases they may not enjoy. But in the EDVA some extremely capable senior judges are still taking patent cases easing the load on their fellow judges, division and district.

## **Conclusion**

Even with its growing patent caseload, the EDVA is the fastest trial docket in the country for the sixth straight year. Time honored procedures, disciplined administration of local rules, and an engaged and active judiciary all contribute to this amazing track record of efficiency and effectiveness.

*Bob Tata is the managing partner of the Norfolk, Virginia, office of Hunton & Williams LLP. He has handled many cases in the Eastern District of Virginia, including in all of its divisions. Tata represents plaintiffs and defendants in IP, commercial or other cases as both lead or local counsel. In 2001, as lead counsel, he won what was then the largest jury verdict in EDVA and Virginia history (\$116 million), representing two Harvard MBAs in a patent trade secret, false advertising, trade dress and copyright case regarding a fire escape ladder they invented as a business school project.*