

Lawyer Insights

How The 'Rocket Docket' Continues To Roar Through COVID

By Robert Tata

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For 11 straight years through 2018, the [U.S. District Court for the Eastern District of Virginia](#), known as the rocket docket, had been the nation's fastest civil trial court.

But for the second year in a row, the Eastern District of Virginia — Alexandria, Richmond, Newport News and Norfolk — has been nudged down to second, finishing slightly behind the [U.S. District Court for the Northern District of Florida](#) in the last year.

So the EDVA remains fast, just not the fastest in the past two years.

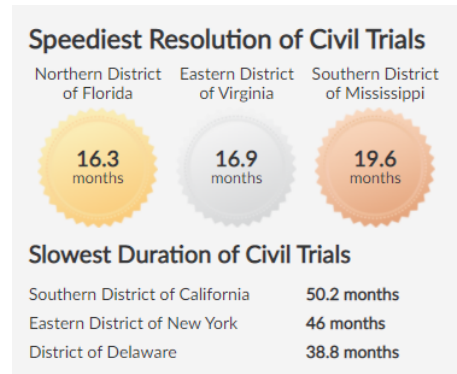
Recently available data from the U.S. Courts' Caseload Statistics Data Tables page show that in 2020, the Northern District of Florida won the gold medal for fastest civil trials with a median time to civil trial of 16.3 months. The EDVA won the silver at 16.9 months. And the [U.S. District Court for the Southern District of Mississippi](#) took the bronze with 19.6 months.

Meanwhile, the slowest pokes in the country last year were the [U.S. District Court for the District of Delaware](#) (38.8 months), the [U.S. District Court for the Eastern District of New York](#) (46 months — second year in a row to place second to last), and the [U.S. District Court for the Southern District of California](#) (a shocking median time of 50.2 months to civil trial).

Of course, the longer it takes to try a case, the more likely it is to cost more, maybe much more.

This is our ninth year [writing](#) for Law360 regarding the EDVA rocket docket.

In the past, in addition to reporting on the speed to trial, we have highlighted the EDVA local rules ([2013](#)), the EDVA's so-called patent wheel, which rotates patent cases filed in other divisions throughout the district ([2014](#)), the [U.S. Court of Appeals for the Fourth Circuit](#) appellate time intervals ([2015](#)), patent cases and class actions ([2016](#)), what continues to fuel the rocket docket ([2017](#)), more about the local practice in the district ([2018](#)), some national comparisons ([2019](#)), and COVID-19 practice in the EDVA ([2020](#)).



For historical context, when I first wrote on this topic in 2013 regarding 2012 statistics, the median time to civil trial in the EDVA was 11.3 months. This year it is 16.9 months. That computes to a 50% increase in the amount of time to civil trial in the EDVA over eight years.

The first thought, of course, is, "Well, that's because of the pandemic." But, even though the COVID-19

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crisis has contributed to delays, the increasing time to civil trial in the EDVA has continued rise over the years due to other factors, too.

The 2019 number, reported last year, was 14.3 months, so the time to trial in the EDVA has been trending upward for a while.

This year, a senior judge told me that during the 1980s, the EDVA had a goal of getting a civil case to trial in five months, and no one gave continuances. Though continuances are more common now, the culture of the court — in trying to dispense justice fairly and quickly — has largely survived the almost wholesale turnover of the bench, even though the average time to trial has increased substantially.

Today, the senior judges in the EDVA remain very active taking substantial caseloads, which helps to keep the docket under control.

The reasons a senior judge maintains a very active docket can be many. One judge told me that an active docket allows one to keep the mind active, reviewing some great memoranda from some first-class lawyers in ruling on some very interesting cases. And it's a good thing that so many senior judges in the EDVA and elsewhere remain active, as it no doubt results in more justice, faster.

Regarding COVID-19, the EDVA's goal has always been to keep the litigation moving. At one point, all matters were remote. Then, the system evolved into hearing some matters remotely and some live.

In order to do jury trials remotely, the EDVA set up a system where three courtrooms are used to make efforts to keep everyone safe. As one example of COVID-19 protocols requiring additional time, the logistics of voir dire have become very cumbersome. Something that was accomplished in a couple of hours or less in the past now takes much longer, because group sizes are limited and the same exact information must be repeated to each group.

The EDVA Norfolk Division courthouse is named the Walter E. Hoffman U.S. Courthouse after former Chief Judge Walter Hoffman, the acknowledged father of the modern rocket docket. I was in this courthouse earlier this month, when COVID-19 safety protocols were in effect but, as they say, the show was going on.

Two full-blown multiday jury trials — one civil and one criminal — were being conducted, in addition to other hearings. In order to get into the courthouse, individuals had to certify that they read a three-page memorandum displayed on the door and that they will follow the guidance.

Everyone must wear a mask. Of course, as has always been the case, the public and attorneys cannot bring cellphones, computers, smartwatches and other electronics into the courthouse, unless they have a signed order.

During this period, three courtrooms were being used for each of the jury trials in order to provide maximum safety.

One courtroom was for the judge, jury, counsel and parties. A second was for public spectators. And a third courtroom was used as a large jury room to allow social distancing during deliberations.

The courtroom for public spectators had a large monitor set up with several views, including the judge,

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the witness, counsel table and the courtroom. When exhibits were discussed, the exhibits were displayed. The spectators are positioned 6 feet apart.

But COVID-19 practice no doubt will result in some positive lessons learned in the EDVA and elsewhere.

Like everyone else, the court, counsel and litigants have become more adept and comfortable with remote proceedings. There is a recognition that this can result in tremendous cost savings.

The EDVA hears very sophisticated cases and often involves counsel from all over the country supported by their local counsel. When counsel do not have to fly in from California, New York, Boston or elsewhere to join their local counsel for a hearing or conference, there is often a five-figure saving on just one event.

Conclusion

For 11 years, the Eastern District of Virginia rocket docket was one of the fastest civil trial courts in the land. This year it is second among the nation's 94 district courts.

Still, the EDVA rocket docket resolves civil trials at almost twice the speed of the average district court nationally. Meanwhile, this court has moved swiftly to adapt to COVID-19 and responsibly continues to dispense justice in a safe and efficient manner.

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