

Why The Original 'Rocket Docket' Will Likely Resume Its Pace

By **Dabney Carr** and **Robert Angle** (February 9, 2023, 3:13 PM EST)

For over 50 years, the U.S. District Court for the Eastern District of Virginia has been the fastest federal trial court in the country, earning its status as the original "rocket docket."

In 2013, the median time to trial for a civil case in the Eastern District of Virginia was just over 11 months, more than twice as fast as the national median.[1] As of the beginning of the COVID-19 pandemic in March 2020, the Eastern District of Virginia was the second-fastest court in the country, with a median time to trial for civil cases of 14 months, a full year faster than the national median.[2]

After almost three years of the pandemic, however, the Eastern District of Virginia has come back to the pack. The median time to trial for a civil case in the Eastern District of Virginia as of the end of September 2022 jumped to 26.1 months, just five months faster than the national median.[3]

More notably, the Eastern District of Virginia no longer stood as the fastest federal court in the country for civil cases, falling to 10th among the 94 federal district courts, as measured by time to trial.[4]

Between March 2020 and early 2022, the Eastern District of Virginia conducted most civil hearings remotely, and the court could not hold in-person civil jury trials. These pandemic-related delays likely explain much of the slowdown in the pace of civil cases in the Eastern District of Virginia, especially given the need to resolve criminal cases delayed by the pandemic first.

The slower time to trial in civil cases raises the question, though, whether the Eastern District of Virginia still merits its distinction as a rocket docket, and whether it can recover its traditional speedy pace.

The bet here is that it will because of several factors unique to the Eastern District of Virginia.

The Culture of Speed

First, the Eastern District of Virginia retains a culture of speed that is deeply ingrained in the judiciary and the attorneys practicing in the Eastern District of Virginia. Simply put, as pandemic restrictions ease and backlogs lessen, the bench and the bar will expect prepandemic case times to return.

The Eastern District of Virginia's governing principle that cases will move swiftly and efficiently has been in place since the court first adopted local civil rules more than 50 years ago.

Speed is so much a part of the district's culture that it is etched on the face of the courthouse in the Alexandria Division, with the phrase "Justice Delayed, Justice Denied" above a stone relief of a hare leaping over a tortoise.

The Eastern District of Virginia's reputation for speed and punctuality is a point of pride for both the bench and the bar. Lawyers who practice in the Eastern District of Virginia have known nothing else and quickly learn both how to adjust to the speedy docket and how to use it to their advantage.

Judges likewise know that moving cases along through swift resolution of motions and strict deadlines improves the delivery of justice and allows the court to run more smoothly.

These habits, formed over years, set the norm for practice in the Eastern District of Virginia and will overcome pandemic-related backlogs that have slowed the time to trial.

Local Rules and Scheduling Orders

Second, the primary driver of the Eastern District of Virginia's speedy docket — the comprehensive deadlines in the court's local rules and scheduling orders — have not changed, and will bring case times back to historical averages.

Tradition, habit and a long-accepted philosophy of speed are not enough to maintain the quick pace of the Eastern District of Virginia's docket. The Eastern District of Virginia's detailed local rules and the strict pretrial schedules provide the structure that ensures that cases will get to trial quickly.

Of course, most district courts have local rules, and many use detailed scheduling orders to keep cases on track. The difference in the Eastern District of Virginia is the amount of time the court gives parties to prepare their case for trial.

While the exact time frame varies in the court's three divisions of Alexandria, Norfolk and Richmond, litigants can expect that a case in the Eastern District of Virginia will be set for trial within nine to 11 months after filing, even for the most complex cases.

Discovery will last four to six months, dispositive motions must be filed by the close of discovery, and trial will follow only a couple of months later.

All pretrial motions and objections are typically resolved at a final pretrial conference shortly before trial, allowing the trial itself to move swiftly.

Not only do the local rules and scheduling orders dictate a quick and efficient process, the pressure of these deadlines pushes parties to



Dabney Carr



Robert Angle

resolve cases, further reducing the length of time that cases take in the Eastern District of Virginia.

As long as the Eastern District of Virginia maintains its aggressive pretrial schedule and the requirements of the local rules, the median time to trial should soon return to its prepandemic level of 11 to 14 months.

Pretrial Motions and Trial Continuances

Third, apart from the Eastern District of Virginia's local rules and standard pretrial orders, other Eastern District of Virginia pretrial practices — in particular, its procedures for handling discovery disputes and other motions — and its long-standing policy against trial continuances, will speed up litigants and encourage early case resolution, bringing down the pandemic-era average time to trial.

In the Eastern District of Virginia, discovery in a civil case is a four-to-six month whirlwind, and the Eastern District of Virginia judges make sure to prevent discovery disputes from upsetting that schedule.

In the Alexandria Division, discovery motions are decided on a one-week schedule, with motions heard every Friday.

In the other divisions, the district or magistrate judges decide discovery disputes quickly, often in brief phone conferences.

The emphasis on swift resolution extends to other motions. A long-standing practice in the Eastern District of Virginia is for the judges to rule on motions from the bench, often reading any opinion into the record and entering a short order reflecting that opinion. That practice saves the court time, eliminates delay and keeps the parties on schedule.

As with discovery motions, the judges in the Alexandria Division will hear nondiscovery motions on the Friday following the completion of briefing and will routinely rule at the hearing or issue a written ruling before the hearing date.

The central tenet of the Eastern District of Virginia rocket docket, however, is that once set, trials will not be continued. Every attorney practicing in the Eastern District of Virginia can recite stories of judges expecting cases to be ready for trial, despite conflicting trial schedules or other routine grounds for a continuance.

Holidays, and sometimes weekends, are considered just another date on the calendar. Even weddings, births and other major life events will often justify a continuance of only a few days or a week.

While unspoken, the principle appears to be that if trials are never continued, no one will ask for one. Cases will either settle because of the pressure of an impending trial, or lawyers will simply do what is necessary to be ready to try their case.

It can appear to be a harsh system, but in truth, it is simply a system with high expectations.

Those expectations are coupled with a reputation for civility and competence, among both the bench and bar, producing an efficient system marked by fundamental fairness.

Conclusion

In short, practitioners should expect the Eastern District of Virginia to return to its turbocharged ways in the near future.

Its culture of speed, use of local rules and scheduling orders that require expediency, and local practice of deciding pretrial motions promptly and refraining from continuances have not changed.

As COVID-19 restrictions and the case backlog fade, the court will once again return to being the fastest court in the country.

Dabney Carr and Robert Angle are partners at Troutman Pepper.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] See Federal Judicial Caseload Statistics, Table C-5 (March 31, 2013).

[2] See Federal Judicial Center Caseload Statistics, Table C-5 (March 31, 2020).

[3] See Federal Judicial Caseload Statistics, Table C-5 (September 30, 2022).

[4] *Id.*

All Content © 2003-2023, Portfolio Media, Inc.