

Lawyer Insights

Virginia 'Rocket Docket' Slowdown Is Likely A Blip

By Robert Tata

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It had to happen sooner or later.

For 14 straight years, the U.S. District Court for the Eastern District of Virginia, with its divisions in Alexandria, Newport News, Norfolk and Richmond, was the fastest or second-fastest civil trial court of the 94 U.S. district courts, according to the Judiciary Data and Analysis Office's Table C-5.

Then, in 2022, the EDVA — known by many as the original and for many years the fastest rocket docket — finished 18th with a median time to trial disposition of 26.4 months. Although this kept the EDVA in the top 20th percentile of all district courts, the drop raises some doubt about the court's "rocket docket" moniker.

But is a recount in order? One that might send the EDVA back up the rankings? More on that later.

This is our 11th year writing for Law360 regarding the EDVA's rocket docket. In the past, we have looked at everything from the unique local rules and the so-called patent wheel, to COVID-19 practice in the EDVA (2020 and 2021), and the fastest courts in Virginia and Florida (2022).

This year, we spoke to the EDVA's chief judge, the court's clerk, and the program manager for the Administrative Office of the U.S. Courts regarding civil caseload statistics in an effort to identify an explanation for the district's statistical tumble.

Caseload statistics for 2022 have been recently published to the U.S. Courts' Caseload Statistics Data Tables page.¹ This year's champ, clocking in at a median time to trial disposition of 18.3 months, is the U.S. District Court for the District of Montana. The U.S. District Courts for the Northern District of Texas and the Western District of Arkansas tied for the silver medal at 18.8 months, and the U.S. District Court for the District of Wyoming took the bronze with 20.1 months.

The slowest courts in the country last year, according to JDAO Table C-5, were the U.S. District Courts for the District of Utah (at 63.5 median months to civil trial disposition), the Northern District of New York (59.5 months), and the Eastern District of New York (52.1 months).

Speediest Resolution of Civil Trials

District of Montana

18.3 months

Northern District of Texas (tie)

18.8 months

Western District of Arkansas (tie)

18.8 months

Slowest Duration of Civil Trials

District of Utah

63.5 months

Northern District of New York

59.5 months

Eastern District of New York

52.1 months

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We note that significant variation in caseload statistics across years is not unusual.

For example, last year's champion, the Northern District of Florida (12.7 months in 2021) checked in at 22 months this year. And for further historical context, when we first wrote on this topic regarding 2012 statistics, the median time to civil trial in the EDVA was 11.3 months.

This year's 26.4 months computes to a 134% increase between now and then. The EDVA's 2021 number, reported last year, was 18.6 months, so the time to trial in the EDVA has been trending upward for a while.

It is easy to attribute recent increases in time to trial to the COVID-19 pandemic. But even though courts' COVID-19 measures have no doubt contributed to delays, the increasing time to civil trial in the EDVA and elsewhere has risen over the years due to other factors, too, like well-publicized judicial vacancies. Why does time to trial matter? Well, first, there's the old adage that justice delayed is justice denied. A corollary reason is that the longer it takes to try a federal civil case, the more expensive it is likely to be for the litigants, which, for better or for worse, may lead to settlement before trial.

As a general point for practitioners, whether your court is fast or slow, your client should know about it and plan — and budget — accordingly.

A Possible Recount? Considering Other JDAO Data

When we started this series of articles over 10 years ago, we identified JDAO Table C-5 as the best proxy for speed to resolution. Table C-5 is labeled "Median Time Intervals from Filing to Disposition of Civil Cases Terminated."² We look under the header "Median Time Interval in Months" for termination "During Trial" (Column K of the downloadable Excel file).

This year, when we saw the EDVA fall from second place to 18th place according to Table C-5 — and outside of first or second place for the first time in 14 years — we were, to say the least, surprised. Searching for an explanation, we reached out to the court.

EDVA Chief District Judge Mark S. Davis and clerk Fernando Galindo were kind enough to discuss this with us and provide some data. So did Daniel Gibson, JDAO program manager for data quality and production at the Administrative Offices of the U.S. Courts.

The first thing we learned is that, at periodic court conferences, the judges and other court personnel often focus on Table T-3, which reports "Time Interval from Filing Date to Beginning Date for Completed Civil Trials" and includes data for "Median Time in Months" for "Total Trials." This sounds very similar to C-5, but the rankings in each table do vary slightly.

So, what's the difference between T-3 and C-5? Both tables are official federal judiciary statistical tables published and prepared by the JDAO. Here is how Gibson explained the difference in an email:

The difference here is two-fold. The first is that the T-3 table only measures civil cases that go to trial, while the C-5 table takes a measure of all civil cases. The second difference is that the T-3 table only measures up to the beginning date of a completed civil trial while the C-5 table measures to the point when the first disposition is made within the case. ... The T-3 table measures how long it takes a

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TRIAL to move from the filing date to the begin date for a civil trial that is then completed. The C-5 table measures how long it takes a civil CASE to move from the filing date to the disposition of the civil case. Though similar, they are measuring two different sets of data.

Or perhaps put another way, as most relevant to our analysis, T-3 measures how long it takes for a trial to begin, while C-5 measures the time it takes to reach a case's conclusion.

Therefore, C-5 and T-3 both measure speed and presumably efficiency, but apparently C-5 includes all resolved cases — although, as mentioned, we have historically focused on the column in C-5 that is limited to court action "during trial" and therefore should not include cases decided before trial.

What does this inside baseball have to do with the EDVA's precipitous fall in the rankings based on the C-5 data, which we have always used?

Back to table T-3. When presented with the apparent fall in the C-5 rankings, the EDVA clerk responded that table T-3 told a different story.

It shows that, as of June 2022, the EDVA was No. 1 in the country with 18.1 months median time. It remained No. 1 in September (18.1 months), but by the end of December, it slid to No. 8 (24.1 months).

What could have caused the EDVA to slide from its customary first place in September, to eighth place in the December 2022 report? One explanation for the drop-off may lie with one case, Trustees of Columbia University in the City of New York v. Gen Digital Inc., formerly known as Symantec Corp.³

This case was filed in 2013 but not resolved until almost 10 years later, after the court entered a jury verdict on May 2, 2022.⁴ We will spare the readers the tortured path of this patent case, but suffice it to say it appears that the EDVA's fourth-quarter 2022 statistics included the case's 10 years of data and could help explain why the EDVA dropped from first to eighth place on Table T-3 and down to 18th on Table C-5.

Certainly, all districts have aberrational cases, but this one was a true outlier in the EDVA. No matter the impact that Trustees of Columbia had on the EDVA's 2022 statistics, we have little doubt that the court will soon be back to being ranked among the fastest civil dockets in the nation.

The EDVA Today

The EDVA has 11 active district judges, with four located in Alexandria, three in Richmond, and four in Newport News and Norfolk together, plus nine dedicated senior district judges and nine magistrate judges, who deserve much credit for managing the court's efficient docket.

Remarkably, more than a third of the court's active judges were sworn in within the past two years. Judge Patricia T. Giles received her judicial commission on Nov. 1, 2021; Judge Elizabeth Hanes was sworn in on Aug. 5, 2022; Judge Michael S. Nachmanoff was sworn in Nov. 2, 2021; and Judge Jamar K. Walker was sworn in on March 6, 2023.

And nearly two-thirds of the active bench — 7 of 11 district judges — began their tenures in 2019 or later.

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Despite the turnover, and having to navigate the treacherous shoals of the pandemic, Judge Davis reports that the EDVA has been back at full speed ahead for some time now.

Practitioners should not conclude that a one-year blip means that the EDVA no longer maintains a speedy civil docket. It is an exciting time in the EDVA, and it is clear that the long-standing commitment to speedy and efficient justice remains a high priority. Buckle your seatbelts!

Notes

1. U.S. Courts' Caseload Statistics Data Tables, available here: <https://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables?tn=c-5&pn=All&t=All&m%5Bvalue%5D%5Bmonth%5D=&y%5Bvalue%5D%5Byear%5D=>.
2. Table C-5, available here: <https://www.uscourts.gov/statistics/table/c-5/statistical-tables-federal-judiciary/2022/12/31>.
3. Trustees of Columbia University in the City of New York v. Gen Digital Inc. f/k/a Symantec Corp., Case No. 3:13-cv-808.
4. ECF No. 1206.

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