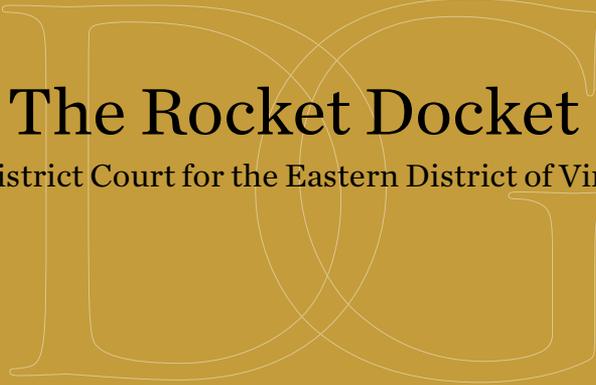




The Rocket Docket

U.S. District Court for the Eastern District of Virginia



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ATTORNEYS AT LAW

LITIGATING IN THE “ROCKET DOCKET”

So, you are about to litigate an important case in federal court in Virginia, home of the Rocket Docket. DiMuroGinsberg welcomes you to our home state with this caution: be prepared, be very prepared, because there are not any trial courts like those in the Eastern District of Virginia, where in civil cases the median time from filing a Complaint to trial was 15.1 months in 2015, the fastest in the country and where you are expected to complete discovery in four months. This includes class actions and patent cases.

This article is to familiarize you with the unique litigation process applied in the Rocket Docket.

Virginia is divided into two Districts, the Eastern District of Virginia and the Western District of Virginia. Except in certain patent cases, appeals from both Districts are heard in the Fourth Circuit Court of Appeals, which is located in Richmond, Virginia. The Eastern District of Virginia has jurisdiction over six million people which comprises approximately 85% of the state's population.

The U.S. District Court for the Eastern District of Virginia (EDVA) is divided into four Divisions: Alexandria, Newport News, Norfolk, and Richmond.

The Eastern District of Virginia has its own local rules that apply across the Divisions for both civil and criminal cases. The local Rules can be found at: www.vaed.uscourts.gov/localrules/LocalRulesEDVA.pdf.

However, each Division in the Eastern District of Virginia has its own practices which are not necessarily written anywhere. For instance, each Division, and sometimes Judges within the Divisions, issue their own preferred scheduling Orders and procedures for motions. It is important to be familiar with the procedures of the Division in which a case is filed because regardless of the Division, the Eastern District of Virginia is The Rocket Docket, unlike any other District in the United States.

This article focuses mostly on the procedures in the Alexandria Division of the Eastern District of Virginia as well as an overview of procedures in all Divisions in patent cases.

The Alexandria Division encompasses the following counties and independent cities: Arlington, Fairfax, Loudoun, Prince William, Stafford, Fauquier, Alexandria, Falls Church, Fredericksburg, Manassas, and Manassas Park.

PROTOCOLS OF THE “ROCKET DOCKET”

1. The court requires that service of the suit be made promptly and within 90 days of filing under Local Rule 4.
2. An initial pretrial order will issue from the district judge opening discovery and setting a date for the close of discovery and for the final pretrial conference. Discovery will last approximately 4 months and the final pretrial conference will be held by the district judge about a week after the close of discovery. This order also limits discovery to 5 non-party, non-expert witness depositions and permits 30 interrogatories per party.
3. The order will also set a date for a Rule 16(b) pretrial conference. The Rule 16(b) conferences are held by the magistrate judges on Wednesdays, and the parties' proposed discovery plan is due the Wednesday before the Rule 16(b) conference.
4. Shortly after the Rule 16(b) conference, the assigned magistrate judge will issue a Rule 16(b) scheduling order. The order sets an expedited briefing schedule permitting non-dispositive motions filed by 5:00 p.m. on any Friday to heard the following Friday at 10:00 a.m. before the assigned magistrate judge.

5. Objections to discovery requests are to be served within 15 days. Answers are due in 30 days. While counsel may agree to an extension of time to answer, because of the tight discovery time limits, even the most accommodating opposing counsel can only grant a 7-10 day extension in the beginning of the discovery period. As discovery comes to a close, extensions become almost impossible – due primarily to the court’s stringent discovery deadlines and general reluctance to extend discovery or to continue the final pretrial conference.
6. Civil motions hearings, including discovery motions, are held every Friday. The local rules require moving parties to set motions for hearing, or arrange with opposing counsel for submission without oral argument, within 30 days of filing or risk the motion being deemed withdrawn. The moving party is required to confer by phone or in person with opposing counsel prior to filing a motion.
7. Non-dispositive motions can be filed (and usually are filed) on any Friday for hearing the following Friday. Opposition briefs are due on the next Wednesday and replies (if needed) are filed as soon as possible on Thursday morning - yes, the day before the hearing.

PROTOCOLS OF THE “ROCKET DOCKET”

8. For dispositive motions, responsive briefs must be filed within 14 days and reply briefs must be filed within 6 days of the response. Dispositive motions may not be set for hearing fewer than 21 days after filing. Any dispositive motion against a pro se party must provide at least 21 days for the pro se party to respond and contain the Roseboro notice set forth in Local Rule 7(K).
9. The final pretrial conference occurs within a week or so of the close of discovery at which time the district judge sets the trial date. Trial is usually set 4 - 8 weeks out from the final pretrial conference. The parties must file on or before the final pretrial conference their Rule 26(a)(3) disclosures and a list of the exhibits to be used at trial, a list of the witnesses to be called at trial, and a written stipulation of uncontested facts. Objections to exhibits must be filed within 10 days after the conference; otherwise the exhibits stand admitted in evidence.
10. You may have read that there are no continuances of the trial date in this court. This is not fiction. Continuances are only permitted in the most extenuating of circumstances.

- 1 1. The court will, at most, extend the discovery date by a few weeks and extend the expert designation dates if the parties go to the court with a motion showing due diligence up to that point. Most of the magistrate judges look with disfavor on motions to compel brought in the last week of discovery and say it is too late. It is better to attempt to anticipate any such issues at the outset of the case and request any such extensions in the joint discovery plan.
- 1 2. All exhibits will be pre-marked and exchanged before the final pre-trial conference. The parties can agree to exchange exhibits electronically. A short deadline to file objections will be put in place and exhibits not objected to are deemed admitted without further discussion. Witness lists are filed at the same time.
- 1 3. The practice of the court has changed in recent years in that a district judge and magistrate judge is assigned to each case. This is of great benefit to the parties as the judges become familiar with the case.

PROTOCOLS OF THE
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14. Whatever amount of time you think the trial will take – cut it down to a quarter of that time:

- The court encourages pretrial motions in limine and for summary judgment to narrow the issues before the trial. The court discourages in limine motions on the morning of trial – they need to be filed and argued the weeks before trial and usually this deadline is agreed to in the parties’ joint discovery plan.
- The jury will be selected and opening arguments will be completed within one to two hours of the start of the trial.
- As compared to most Virginia state courts, the judge - not the lawyers - conducts voir dire.
- The attorney who asks the standard litany of foundation questions on documents and events is wasting his or her questions. The questioning attorney should assume no objection to foundation and get to the point.
- The second witness on an issue is considered cumulative.
- The court will have no other distractions during trial and breaks will be short.

Obviously, the enforcement of these guidelines varies from judge to judge (the more recently appointed judges are a little more flexible), but the spirit of these guidelines is followed by all judges and the deadlines are strictly enforced. I am often surprised how many attorneys with very good reputations are befuddled by the pace of the case or trial because they are used to a different system. The bottom line is that this court favors the attorney who can get to the point quickly and is not intimidated by the process.

ABOUT DIMUROGINSBERG

The lawyers of DiMuroGinsberg are widely recognized for their experience in The Rocket Docket and other local courts. Ben DiMuro, Nina Ginsberg, and other senior partners of our firm have been successfully litigating simple and complex cases in The Rocket Docket for more than 35 years. Because of our in-depth knowledge of the Virginia court system, our extensive work with the bar on legal ethics matters and our ability to provide cost-effective legal representation, the Am Law 100's consistently call upon us to represent clients when conflicts arise or to assist as local counsel. The experience and knowledge of our staff makes us the ideal choice to act as lead counsel or local counsel for out-of-state clients and law firms unfamiliar with the unique rules and practices of the EDVA.

For a list of representative cases we've tried in the Rocket Docket, [click here](#). For more information or to contact one of our lawyers, you may email us at dimuro@dimuro.com or call us at 703-684-4333.

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OUR EXPERIENCE.
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