

**BUSINESS COURT AD HOC COMMITTEE  
REPORT PREPARED FOR THE MAY 4, 2012 COUNCIL MEETING**

**1. Next Scheduled Meeting of the Committee**

None scheduled.

**2. Council Approval**

N/A.

**3. Membership**

N/A.

**4. Accomplishments Toward Committee Objectives**

After the March Council meeting, the Council issued a written resolution supporting Draft 3 of HB 5128 in anticipation of a Judiciary Committee hearing on the bill, then scheduled for March 29, 2012. The hearing did not proceed and has been reset for May 24 and 31, 2012. Committee Chair Diane Akers has been asked to testify in support of the bill.

**5. Meetings and Programs**

None scheduled.

**6. Publications**

A few Section members have sent emails in response to comments on business courts made by Mr. Lukas in his Chair's Letters asking questions about the status of the legislation.

**7. Methods of Monitoring Legislative/Judicial/Administrative Developments and Recommended Action**

The Committee Chair will maintain contact with Mike Gadola, Gov. Snyder's Director of Legal Affairs, as well as Rep. John Walsh, the bill's primary sponsor, to monitor the progress of the bill.

**8. Miscellaneous**

Oakland County released the administrative order describing its "Specialized Business Docket", copy attached, which is significantly different from Kent, Macomb and the recommendations of the Judicial

Crossroads Task Force in that it does not assign cases to identified business court judges. Instead, all judges in Oakland County are deemed to be “business court judges” and the business cases assigned to them with damages exceeding \$500,000 will be subject to certain case management procedures (*e.g.*, early pretrial conferences, pretrial disclosures, detailed case management plan, etc.).

Respectfully submitted,

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STATE OF MICHIGAN 6 <sup>th</sup> JUDICIAL CIRCUIT	SPECIALIZED BUSINESS DOCKET (BUSINESS COURT)	ADMINISTRATIVE ORDER 2012- _____
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## Scope

This administrative order is issued in accordance with Michigan Court Rule 8.112(B) which allows a trial court to issue administrative orders governing internal court management. This administrative order establishes a specialized business docket pilot program, as recommended by the State Bar of Michigan Judicial Crossroads Task Force, and sets forth the goals of the specialized business docket, creates the procedural mechanisms by which cases will be assigned to the specialized business docket, and prescribes the provisions by which the specialized business docket will be managed and evaluated.

The 6<sup>th</sup> Circuit Court will implement a Specialized Business Docket (hereinafter "SBD") Pilot Project ("Pilot Project"), commencing on July 1, 2012 (the "Commencement Date") and remaining in effect until December 31, 2014 (the "Expiration Date") or by further order of this Court. The Pilot Project is being established to study the effectiveness of implementing a specialized docket for the handling of significant business<sup>1</sup>-related litigation of certain types in lieu of traditional case file management. The Court will monitor the effectiveness of the Pilot Project, and report on its progress from time to time as requested by the State Court Administrative Office or the Chief Judge of the 6<sup>th</sup> Circuit Court.

This administrative order is issued in accordance with Oakland County Administrative Order 2011-04 (Case Flow Management Plan).

Other than as expressly provided in this Local Administrative Order (the "LAO"), the procedural and substantive law otherwise applicable to cases assigned to the SBD shall remain unaffected.

### I) Case Eligibility Criteria for the SBD

- A) Eligibility Criteria. The following types of cases, whether qualifying by complaint, counter-claim, cross-claim, or third-party complaint, are eligible to be assigned to the SBD as long as the damages sought or expected exceed \$500,000.00:
1. Business governance/internal affairs, including shareholder derivative and oppression suits; and
  2. Business disputes, including business torts, contracts, antitrust, intellectual property, trade secrets, securities, and commercial real estate disputes.

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<sup>1</sup> For purposes of this Order and the SBD generally, "business" shall be broadly defined to include, but shall not be limited to, a commercial enterprise such as a sole proprietorship, partnership, limited liability partnership or company, corporation, and nonprofit organization.

- B) Eligibility Exclusion. Cases expressly excluded from the SBD include, but are not limited to, the following:
1. Personal injury and wrongful death;
  2. Medical malpractice;
  3. Commercial landlord versus consumer tenant;
  4. Noncommercial real estate matters;
  5. Actions by consumers against businesses and by businesses against consumers and
  6. Occupational health and safety matters;
- C) Discretionary Eligibility Criteria. Notwithstanding the foregoing, any case not otherwise eligible to be assigned to the SBD but that substantially complies with the eligibility criteria and for which good cause exists to include in the SBD (for example, a highly complex commercial case otherwise eligible for the SBD involving requests for injunctive relief/specific performance or with a damages request for \$409,909.99) may be re-assigned.

## II) Mechanisms for Case Assignments to and from the SBD

- A) Mechanisms for Identification of Assignment to the SBD. Parties may identify cases as eligible for the SBD docket by the following methods:
1. Initial Filing. When a case that meets the SBD eligibility criteria set forth in Section II.A. is filed, the caption of the complaint may contain as a statement of the attorney for the plaintiff, or of a plaintiff appearing without an attorney: "Specialized Business Docket Case Eligible."
  2. Responsive Pleading. If the SBD Case designation is not set forth on the complaint, and any other party filing a responsive pleading (including answers, counterclaims, cross-claims, and answers thereto (and summary dispositions in lieu of the same) believes the case meets the eligibility criteria, such party may include such a statement on the caption of the responsive pleading.
  3. Stipulation. When all parties agree to and file a stipulation of eligibility for the SBD.
  4. Judicial. A General Civil Division judge may determine that a case, meeting the eligibility criteria set forth in Section II A, is eligible for assignment to the SBD.
- B) Mechanisms of Assignment to the SBD. SBD cases identified as eligible for assignment to the SBD shall be assigned to the SBD by the following methods:
1. Motion. A General Civil/Criminal Division judge may assign a case to the SBD upon a motion made and heard by any party in the matter within 21 days of the first responsive pleading. Motion fees will be waived upon request of a party.

2. Stipulation. A General Civil/Criminal Division judge shall assign an eligible case to the SBD upon the stipulation of the parties within 21 days of the first responsive pleading.
3. Judicial. A General Civil/Criminal Division judge may assign a case from the General Civil Docket to the SBD following a status/pretrial conference or after notifying the parties that the case will be assigned to the SBD, unless they object within 14 days of service of the notice (in the event of an objection, the Court may assign the case to the SBD following a hearing on the objection).

C) Mechanisms for Removal from the SBD.

1. Motion by Parties. A SBD judge may remove a case from the SBD to the General Civil Docket following a hearing on a motion filed by a party on the ground that the case does not meet the eligibility criteria. Motion fees will be waived upon request of a party.
2. Order to Show Cause by Court. A SBD judge may remove a case from the SBD to the General Civil Docket following a hearing on an order to show cause issued by the court on why a case should not be removed from the SBD to the General Civil Docket on the ground that the case does not meet the eligibility criteria.

### III) The SBD Judges & Dockets

- A) SBD Judges. During the Pilot Project, all General Civil/Criminal Division judges shall be deemed SBD Judges.
- B) Case Tracking. Cases assigned to the SBD will be assigned an internal docket code identifying its assignment to the SBD, which will be used for tracking purposes and statistical analysis.
- C) SBD Judge Dockets. Any case assigned to the SBD shall continue to remain on the docket of the General Civil/Criminal Division judge to whom the case was originally assigned.

### IV) SBD Scheduling Order

In lieu of a standard General Civil Division scheduling order, when a case is assigned to the SBD, the Court will issue a SBD scheduling order pursuant to MCR 2.401(B)(2). The SBD scheduling order shall contain the following provisions:

- A) Initial Pretrial Disclosures. The parties will make initial pretrial disclosures within the later of (i) forty-two (42) days after the filing of the answer to the complaint, counterclaim, or cross-claim (whichever is the last filed), (ii) twenty eight (28) days after the rendering of a decision on a motion for summary disposition which has been filed as the first responsive pleading, or (iii) twenty eight (28) days after the case is assigned to the SBD. These disclosures must include all of the following, to the extent applicable:
  1. The name and, if known, address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support

its claims or defenses, unless the use would be solely for impeachment. Such disclosure shall include a general description of the subject of that information.

2. A copy, or description by category and location, of all documents, electronically stored information and tangible things reasonably known that the disclosing party has in its possession, custody or control and may use to support its claims or defenses, unless the use would be solely for impeachment.
3. A computation of each category of damages claimed by the disclosing party, the documents or other evidentiary material<sup>2</sup> on which each computation is based, including materials bearing on the nature and extent of damages suffered.<sup>3</sup>
4. Any insurance agreement<sup>4</sup> under which an insurer may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.
5. Issues that the disclosing party believes are likely to be resolved by motion.
6. Issues that the disclosing party believes are presently ready for resolution.
7. A list of citations to case law that the disclosing party believes represents the most significant cases relevant to the resolution of each issue in the case.

B) Joint Pretrial Report. Each party will have twenty-eight (28) days to review each other's initial pretrial disclosures and are jointly responsible for preparing and filing an initial pretrial report, the contents of which shall include:

1. A description of claims and defenses, together with the facts which support them, and not merely the labels.
2. Identification of key witnesses.
3. Anticipated discovery, and a timeline for its completion.
4. Issues with the initial disclosures, if any.
5. Case law the parties would like the SBD judge to consider.
6. Issues the parties believe are ready for resolution.
7. Identification of the existence of prior settlement discussions, if any, and their current status; existence of arbitration and mediation agreements, if any; alternative dispute resolution ("ADR") possibilities considered and proposed; and known or anticipated barriers to resolution, financial and otherwise.

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<sup>1</sup> Unless such material is privileged or otherwise protected from disclosure.

<sup>2</sup> To be made available for inspection and copying pursuant to MCR 2.310.

<sup>4</sup> To be made available for inspection and copying pursuant to MCR 2.310.

8. Identification of any appropriate protective orders (involving matters such as discovery, confidential information, etc.)
9. Whether a Court-appointed expert would assist resolution.

C) Initial Court Conference. Approximately twenty-one (21) days after the joint pretrial report has been filed,<sup>5</sup> the SBD Judge will hold an initial pretrial conference (“the Pre-Trial Conference”) which shall be attended by counsel or a party without counsel (attendance of the parties represented by counsel is optional) to address the following matters:

1. Whether the case is properly assigned to the SBD.
2. Whether some type of ADR is suitable and, if so, when and what type should be employed.
3. Issues ripe for resolution by the Court.
4. Any issues raised in the Joint Pretrial Report.
5. Whether a meeting with the SBD judge attended by the parties would be appropriate.
6. Schedule for the litigation.
7. Discovery issues and necessity for any protective orders (Involving matters such as discovery, confidential information, etc.)
8. When counsel expect to be able to report back to the Court regarding progress on resolving or litigating the case.
9. Whether the parties will consent to expedited motion hearing time.<sup>6</sup>

D) Case Management Plan. Following the Pre-Trial Conference, the SBD judge shall prepare a final scheduling order based on the Pre-Trial Conference discussions. The plan will include requirements for interim pretrial reports by counsel and status conferences with the Court if appropriate.

E) Case Progress. Unless otherwise ordered by the Court, the requirements and preparation of the parties in connection with the Initial Pretrial Disclosures, Joint Pretrial Report, Initial Court Conference, and Case Management Plan shall not stay, extend, or adjourn the progress of the case, including, but not limited to, discovery and motion practice.

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<sup>5</sup> Or, if the case is not immediately referred to the SBD upon commencement, such other time as the SBD judge reasonably determines is appropriate.


<sup>6</sup> Which the Court reserves the right to order on its own initiative pursuant to MCR 2.119.

V) **SBD Opinions; Pilot Project Oversight & Evaluation;  
Caseflow Management Guidelines**

- A) Opinions. Each SBD Judge shall issue a written or oral opinion on any motion for summary disposition filed and heard, and each SBD Judge is strongly encouraged to issue written or oral opinions on other material rulings which may be of interest to the bench, bar and public. Transcripts requested on oral opinions shall be paid for by the parties jointly. Written opinions and transcripts of orally issued opinions shall be posted on the Court's web site. The Court shall take steps not to reveal personal identifiers, corporate trade secrets, or other proprietary/confidential information in accordance with Supreme Court Administrative Orders and any protective orders that have been issued.
- B) Advisory Committee. Subsequent to the approval of this Order by the State Court Administrative Office and prior to the Commencement Date, the Chief Judge of this Court will appoint an advisory committee, which shall include three SBD judges, the Court Administrator of this Court, and three civil attorneys actively practicing law involving the types of cases which are part of the SBD in Oakland County, which will meet at least once annually to assess the progress of the SBD.
- C) User Survey. Upon the closing of any case on the SBD, all parties and/or attorneys will be invited to respond to a survey to determine their satisfaction with the process, specifically addressing the quality, savings, attention, and overall efficiency of the SBD.
- D) Reporting. On an annual basis, the Advisory Committee will evaluate the success of the Pilot Project and compile a written report to be submitted to the Court and the State Court Administrator's Office.

IT IS SO ORDERED.

Dated: March 7, 2012

  
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Nanci J. Grant  
Chief Judge  
Oakland County Circuit Court