

STATE OF MICHIGAN

CIRCUIT COURT FOR THE COUNTY OF MACOMB

In Re: Specialized Business Docket

Local Administrative Order 2011-5

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This Administrative Order is issued in accordance with Macomb County Administrative Order 2004-8 (Caseflow Management Plan) and Michigan Supreme Court Administrative Order 2010-6 (E-filing Pilot Project) upon approval of the State Court Administrative Office (SCAO).

**IT IS ORDERED:**

The 16<sup>th</sup> Circuit Court will implement a Specialized Business Docket (SBD) Pilot Project beginning on November 1, 2011, or as soon thereafter as possible, and concluding on October 31, 2014, or until further Order of this Court. The pilot project is being established to study the effectiveness of implementing a specialized business docket for complex civil litigation in lieu of traditional case file management. The 16<sup>th</sup> Circuit is aware that other pilots and rules regarding business courts are currently being reviewed by the Supreme Court. If the Supreme Court adopts rules during the pendency of the 16<sup>th</sup> Circuit Court Specialized Business Docket Pilot, the 16<sup>th</sup> Circuit Court will comply with the requirements of those rules. The 16<sup>th</sup> Circuit Court will track the effectiveness of this pilot program and shall report to and provide information as requested by the State Court Administrative Office.

**1. Construction**

Following the majority of recommendations of the State Bar of Michigan's Judicial Crossroads Task Force Business Impact Committee<sup>1</sup>, the purpose of the SBD is to: (1) reduce the time it takes for businesses to resolve their complex legal disputes; (2) improve the quality of decisions rendered; (3) reduce the costs incurred by businesses in getting their disputes resolved; (4) improve the attractiveness of Macomb County's court system to the business community; and (5) develop a body of case law on business law issues at the trial court level. The Michigan Court Rules govern all other aspects of the cases involved in the pilot. Jury trial right is preserved and, if demanded, proceeds in the same fashion as in the general civil division, as does a bench trial. Appeal is to the Court of Appeals, as with any other circuit court case.

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<sup>1</sup> *The majority of procedural language used in this Administrative Order has been taken directly from the Proposal for the Establishment of a Specialized Business Docket Pilot Program produced by the State Bar of Michigan's Judicial Crossroads Task Force Business Impact Committee Recommendation dated June 14, 2010.*

## 2. Definitions

- a. “Chief Judge” means the Chief Judge of the 16<sup>th</sup> Circuit Court as appointed by the Michigan Supreme Court.
- b. “Clerk” means the Macomb County Clerk.
- c. “MCR” means the Michigan Court Rules.
- d. “Pilot Program” means the initiative by Sixteenth Circuit Court to implement a specialized business docket for complex litigation as described in the categories below.
- e. “SBD” is the abbreviation for Specialized Business Docket.
- f. “SBD Judge” means the judge assigned to this initiative pursuant to this Order.

## 3. Cases Eligible for Specialized Business Docket

- a. The amount in controversy exceeds \$25,000.
- b. Category I – The following types of cases, whether qualifying by complaint, counter-claim, cross-claim, or third-party complaint (see MCR 2.111(B)), shall be assigned to the business docket and identified as “Category I.” However, any case assigned to the business docket as a mandatory business case shall be subject to removal to the general civil docket by the SBD Judge for good cause, by motion of a party, or *sua sponte*.
  - i. Business governance/internal affairs, including shareholder derivative and oppression suits.
  - ii. Business torts (business plaintiff and business defendant).
  - iii. Antitrust law.
  - iv. Intellectual property.
  - v. Trade secrets between businesses.
  - vi. Securities laws.
  - vii. Commercial real estate cases between businesses.
  - viii. Business-to-business disputes (including contracts, construction disputes and employment matters).
  - ix. Environmental law (with business plaintiff or business defendant).
  - x. Environmental insurance.
  - xi. Matters subject to compulsory arbitration if involving Category I subject.
- c. Category II – The following types of cases may be accepted to the business docket by mutual agreement of the parties and are identified as “Category II.” These cases may be assigned to the SBD if there is room on the docket and the judge and all parties agree to assignment to the business docket.

- i. Collection of professional fees.
  - ii. Commercial insurance indemnification claims.
  - iii. Malpractice claims brought by businesses against attorneys, accountants, architects, or other nonmedical professionals.
  - iv. Commercial insurance coverage disputes.
  - v. Commercial insurance declaratory judgments.
  - vi. Employment law matters, including employer/employee noncompetition, nondisclosure, non solicitation agreements, discrimination claims, and wrongful termination.
  - vii. Individual business owner versus non individual-owned business.
  - viii. Matters subject to compulsory arbitration if involving Category II subject.
- d. Category III (Excluded Cases). The following cases are expressly excluded from the SBD including, but not limited to:
- i. Products liability.
  - ii. Personal injury and wrongful death.
  - iii. Medical malpractice.
  - iv. Commercial landlord versus consumer tenant.
  - v. Noncommercial real estate matters.
  - vi. Actions by consumers against businesses and businesses against consumers.
  - vii. Commercial class actions, proceedings to enforce a judgment.
  - viii. Occupational health and safety matters.
  - ix. Matters subject to compulsory arbitration if involving Category III subject.

#### **4. Specialized Business Docket Judge**

- a. The Chief Judge of the 16<sup>th</sup> Circuit Court shall select one pilot SBD Judge and one Alternate SBD Judge.
- b. The SBD Judge will remain in the case rotation and will not receive fewer or greater case assignments during the pilot. The SBD Judge's caseload will be reduced for any cases transferred from other Judges, which will equalize the SBD Judge's overall docket.
- c. At this time, the Alternate SBD Judge will only be assigned cases where the SBD Judge was recused. Upon the success and expansion of this pilot, the Chief Judge will consider expanding the SBD to the Alternate SBD Judge's docket.
- d. The SBD Judge and Alternate SBD Judge will attend at least one free annual training provided by the American College of Business Court Judges.

## 5. Specialized Business Docket Case Management

The court will issue a scheduling order pursuant to MCR 2.401(B)(2) when a case is assigned to the SBD. The scheduling order will contain the following provisions:

- a. Initial Pretrial Disclosures. The parties will make initial pretrial disclosures within the later of 28 days after initial pleadings are concluded or within 28 days after the case is assigned to the SBD. These disclosures must include all of the following, to the extent applicable:
  - i. The name and, if known, address and telephone number of each individual likely to have discoverable information - along with the subjects of that information – that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.
  - ii. A copy, or description by category and location, of all documents, electronically stored information, and tangible things 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.
  - iii. A computation of each category of damages claimed by the disclosing party, who must also make available for inspection and copying as under MCR 2.310 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of damages suffered.
  - iv. For inspection and copying under MCR 2.310, any insurance agreement 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.
  - v. Issues that the disclosing party believes are likely to be resolved by motion.
  - vi. Issues that the disclosing party believes are presently ready for resolution.
  - vii. A list of citations to the case law that the disclosing party believes are the most significant cases relevant to the resolution of each issue in the case.
  - viii. Prior decisions from SBD cases applicable to the instant case.
- b. Joint Pretrial Report. The parties will have 28 days to review each other's disclosures and are jointly responsible for preparing and submitting a pretrial report. Contents include:
  - i. Description of claims and defenses, including the facts that constitute them, not just the labels.
  - ii. Identification of key witnesses.
  - iii. Anticipated discovery and timetable for completion.
  - iv. Issues with initial disclosures (if any).
  - v. Case law the parties would like the judge to consider.
  - vi. Issues the parties believe are ready for resolution.

## 6. Business Docket Procedural Mechanisms

- a. Assignment to the SBD. For applicable cases filed on or after November 1, 2011, all Category I cases shall be assigned to the SBD and Category II cases may be assigned to the SBD by the following methods:
  - i. When a case is filed, the plaintiff is required to file a “Notice for Assignment to the Specialized Business Docket,” for all Category I cases.
  - ii. When all parties agree to and file a “Stipulation and Order for Assignment to the Specialized Business Docket.”
  - iii. By motion of any party requesting Category I mandatory assignment. (The motion fee will be waived.)
  - iv. When any Judge of the 16<sup>th</sup> Circuit Court refers the case for assignment to the SBD.

- b. Removal from the SBD.

Any party may file a motion to remove the case from the SBD to the general civil division on the ground that the case does not meet the criteria for the SBD. (The motion fee will be suspended and imposed as costs if the court finds that the case meets the criteria for the SBD.) The SBD Judge may remove a case from the SBD to the general civil division with the approval of the Chief Judge.

- c. Recusal.

If the assigned SBD Judge cannot hear a case, the case will be reassigned to the alternate SBD Judge by the Chief Judge of the 16<sup>th</sup> Circuit.

- d. Case Tracking.

- i. Cases assigned to the SBD will be assigned a unique docket code based upon Category I or Category II assignment, which will be used for tracking and reporting purposes.
- ii. The SBD Judge will also assign a tracking docket code based upon the subcategories for Category I and Category II cases as defined in sections 3(b) and 3(c) of this Order.

- e. Opinions.

- i. The SBD Judge will issue detailed written opinions in all non-jury Category I and Category II cases which will be published and made available to the public by posting on the Court’s SBD webpage.
- ii. The SBD Judge will issue a brief description of the verdict and the court’s written instructions to the jury which will be published and made available to the public by posting on the Court’s SBD webpage.

- vii. Prior settlement discussions and current status; existence of arbitration and mediation agreements, if any; ADR possibilities considered and proposed; and barriers to resolution, financial and otherwise.
  - viii. Technological capabilities of counsel to eFile, ability to participate in teleconferences with the court, and location of clients and their ability to appear for court conferences.
  - ix. Whether a court-appointed expert would assist resolution.
- c. Initial Court Conference. Thirty-five days after the Joint Pretrial Report is submitted, the SBD judge will hold an initial conference with counsel, with clients attending at their option, and unrepresented parties, to address the following matters:
- i. Whether the case is properly assigned to the SBD.
  - ii. Whether some type of ADR is suitable and, if so, when and what type should be employed.
  - iii. Issues that are ready for resolution by the court.
  - iv. Any issues raised in the joint pretrial report.
  - v. Whether a meeting with the judge attended by clients would be appropriate.
  - vi. Schedule for the litigation.
  - vii. Discovery issues and necessity for any protective orders.
  - viii. Use of technology, mandatory use of eFiling, service by email, and motion hearings and court conferences via conference call or video conference.
  - ix. When counsel expect to be able to report back to court regarding progress on resolving or litigating the case.
  - x. Whether parties will consent to expedited motion hearing time (which the court may order on its own initiative pursuant to MCR 2.119).
  - xi. Prior SDB decisions relevant to the case.
  - xii. In the event a litigant is in pro per, the SBD Judge will discuss with the party his/her ability to proceed on the SBD unrepresented.
- d. Case Management Plan. The SBD Judge will prepare a detailed case management plan based on the initial court conference. The plan will include requirements for interim pretrial reports by counsel and unrepresented parties, and status conferences with court.
- e. Use of Technology. Electronic filing and service pursuant the 16<sup>th</sup> Circuit Court's eFiling Pilot Project, Administrative Order No. 2010-6, will be required by all parties on the SBD. Parties unable to appear for court proceedings will be permitted to participate from remote locations through technological means.

- iii. The SBD Judge will issue detailed written or oral opinions on summary dispositions, final judgments, or other significant issues in the case. The oral opinions shall be transcribed immediately at court expense. All written and transcribed opinions will be published and made available to the public by posting on the Court's SBD webpage.

## 7. Evaluation

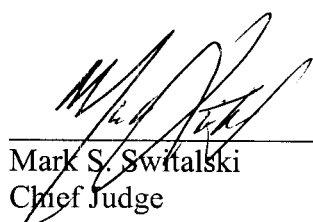
- a. Advisory Committee. Upon approval of this Administrative Order, the 16<sup>th</sup> Circuit Court, under the direction of the Chief Judge, will appoint a committee consisting of the SBD Judge, a practicing civil attorney, a member of Court Administration, and business community representatives who will meet quarterly to assess the progress of the SBD.
- b. User Survey. Upon closing of any case on the SBD, all litigants and parties will be surveyed to determine their satisfaction with the SBD, specifically regarding quality, savings, and overall efficiency of the SBD.
- c. Reporting. On an annual basis, the Oversight Committee will evaluate the success of the pilot and compile a written report to be submitted to the State Court Administrator's Office.
- d. Evaluation. The SBD will actively seek professional evaluators who may be able to provide their services at no cost and/or the assistance of the State Court Administrator's Office in the overall evaluation of the SBD.

## 8. Expiration

Unless otherwise directed by the Michigan Supreme Court, this pilot program, establishing a specialized business docket in the 16<sup>th</sup> Circuit Court, shall continue until December 31, 2014.

This Order shall take effect immediately upon approval by the State Court Administrative Office.

Dated: October 14, 2011



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Mark S. Switalski  
Chief Judge