

THE HONORABLE CHRISTOPHER YATES
Kent County Circuit Court Judge

Judge Yates has served as a circuit court judge in Kent County, Michigan, since 2008, presiding over cases in both the Family Division and the Criminal/Civil Division of the court. Beginning on March 1, 2012, Judge Yates has been assigned to manage a pilot project concerning a specialized business docket. In that capacity, Judge Yates handles cases involving complex business issues ranging from corporate litigation to divorce matters that include substantial business interests.

Specialized Business Dockets: An Experiment in Efficiency

Complex business litigation has long been regarded as the bailiwick of federal courts. State trial courts, on the other hand, are generally viewed within the legal profession as too congested and insufficiently sophisticated to handle the complex legal disputes of the corporate community. But in 2010, a report of the Business Impact Committee of the State Bar of Michigan Judicial Crossroads Task Force proposed that a specialized business docket (“SBD”) pilot program should be undertaken in the circuit courts in Michigan’s most populous counties. By the summer of 2011, the State Court Administrative Office decided to implement SBD pilot projects in Kent, Macomb, and Oakland Counties. And thus several Michigan circuit courts were granted the blessing and latitude necessary to address complex business cases in a truly efficient manner.

The Kent County pilot project took shape in the form of a local administrative order (“LAO”) drafted by Chief Judge Donald Johnston. That LAO assigned several case types to the SBD and also allowed for discretionary transfer of additional case types to the SBD. In a nutshell, the Kent County Circuit Court now automatically assigns to the SBD all matters involving partnership termination, business accounting, corporate receivership, and unlawful trade practice allegations. Beyond that, the Kent County Circuit Court permits discretionary transfer to the SBD of a broad range of cases from professional malpractice actions to divorce actions that involve business interests. In sum, the Kent County pilot project sweeps within its ambit the entire gamut of cases where business interests must be litigated.

With the approval of my colleagues, Judge Johnston assigned me to manage the Kent County pilot project. I inherited this ambitious endeavor in part because of my educational background that includes a Master of Business Administration degree and in part because of my work as a federal prosecutor handling investigations of complicated financial transactions. But my experience with the pilot project thus far has taught me that my most valuable skill in this undertaking is the ability to keep lots of balls in the air at one time. With the advent of the SBD, our court has developed an electronic filing system, a sophisticated case-review protocol, an interactive website, and an advisory committee composed of the most talented commercial litigators in our area. Assembling all of this legal machinery in time for the launch of the pilot project on March 1, 2012, has been akin to trying to prepare a complete Thanksgiving dinner that is ready to be served all at once.

The overarching goal of the Kent County SBD is to resolve complex business cases quickly and efficiently because justice delayed may very well be justice denied, even in the corporate world. Despite the reputation of complex business litigation as intractable and needlessly expensive, the SBD tailors case management, discovery, and adjudication to the specific needs of each case, thereby excising unnecessary procedures in each case and yielding results in a prompt, cost-effective manner. The SBD also simplifies the litigation process by enabling attorneys to file documents electronically and meet with the SBD judge whenever a case requires judicial attention. Finally, the SBD promotes transparency and predictability because the SBD judge reduces all decisions to writing and publishes those rulings on an interactive website for attorneys and the general public to review.

The SBD proceeds from the premise that effective resolution of complex business litigation requires expeditious discovery, early judicial intervention, and prompt identification of controlling issues of law and fact. My first mentor, Chief Judge James P. Churchill of the United States District Court for the Eastern District of Michigan, often remarked that every case comes down to a single issue of law or question of fact. Consequently, he conducted a status conference early in each case to ferret out the crux of the dispute, to design a discovery schedule compatible with the needs of the litigants, and to provide direction to the attorneys in shaping the litigation. Like so much else in my career, I have modeled the Kent County SBD after Judge Churchill's practices. That is, the attorneys must attend a status conference at the inception of litigation, and they leave that conference with a clear plan for completing discovery and turning to the dispositive issues in the case.

To promote efficient resolution of business disputes, the exchange of information in the SBD is not just case-specific. Like stars in the night sky that guide sailors at sea, the published decisions of the SBD judge serve as a roadmap for attorneys and litigants involved in SBD cases. As the SBD evolves over its three-year life span, the body of published decisions should grow to include all of the common legal issues in complex business litigation. Although these decisions do not constitute binding precedent in the sense of *stare decisis*, they furnish a useful guide to attorneys in deciding whether to file motions or litigate legal issues. In sum, the well-worn path ultimately created by the SBD will enable attorneys and clients alike to pick their battles wisely.

But the SBD cannot satisfactorily evolve merely as the brainchild of the judiciary. Hence, Chief Judge Johnston created an SBD advisory committee and named preeminent attorneys Bruce W. Neckers and David J. Gass to serve on the committee. Through this advisory committee, these attorneys – and, by extension, the entire bar – will have direct access to those in the court who run the SBD. The SBD judge must meet regularly with the advisory committee to hear and address the concerns of business-law practitioners. Accordingly, the evolution of the SBD will reflect not only the views of the bench, but also the ideas of the bar.

The concept of the SBD is an idea whose time has come in the State of Michigan. Indeed, House Bill No. 5128, which was introduced on October 26, 2011, would set up specialized courts throughout the State of Michigan to deal with complex commercial litigation. Although the concept is still in its embryonic stage in the Michigan legislature, the State of Michigan plainly is embracing the view that complex business litigation must be streamlined in its court system. The pilot project in the Kent County Circuit Court should provide valuable guidance in devising a broadly applicable model for dealing with complex business cases in Michigan.

Although the SBD has been criticized for affording special preference to business litigation, the reality is that complex business cases routinely have been assigned to the end of the line in the state court system because the cases take up too much time and attention relative to other matters on the docket. To be sure, criminal cases, family matters, and less-complicated civil litigation all can justifiably lay claim to the courts' attention. But the SBD does nothing more than establish a time line for complex business cases comparable to that enjoyed by the rest of the courts' business. Any system that yields swift and efficient resolution of court cases should be employed, and the SBD is a mechanism for achieving such laudable results. My colleagues and I will continue to handle the same volume of cases each year; we simply will do so through a more specialized assignment of our collective responsibilities. We recognize that the SBD constitutes a significant innovation, but we firmly believe that it represents a major step forward for our court and for the State of Michigan.

In its landmark ruling in *AON Risk Services Australia Ltd v. Australian National University*, the High Court of Australia observed that the "efficiency or inefficiency of the courts has a bearing on the health or sickness of commerce." If the state courts in Michigan cannot address commercial disputes in timely fashion, the commercial well-being of the state necessarily will be impaired. For this reason, a 21st-century Michigan economy requires a 21st-century court system that can dispense justice efficiently in even the most complex commercial cases. The SBD pilot projects in Michigan will move the state forward, clearing the way for commercial enterprises to devote more resources and time to business and less attention to litigation. But beyond that, the SBD pilot projects should benefit all litigants in Michigan by spawning innovations such as electronic case filing and proactive judicial intervention that can be incorporated into all litigation, regardless of its complexity. In other words, the SBD pilot projects will not only assist the business community, but also enhance the State of Michigan as a whole by creating a more efficient, responsive court system. For this, we should all be grateful.