



An analysis of
Michigan's proposed
cyber court by
the bill's sponsor

Cyber Court in Michigan

By Marc Shulman

Today we live in a global society where it seems that the Internet is everywhere, not just as an interesting technology but also as part of a new age economy where things and ideas change with a frightening speed.

Ever since the time of Socrates, the judicial system has been slow to change. Attorneys present evidence; the judge ensures a legitimate process by which comes a judgment resolving a dispute.

The stability of our society is grounded on the rule of law in the judicial system to resolve society's disputes. New information and technology is beginning to change the legal landscape, which must be reflected in the evolution of our court system.

Michigan's cyber court would be the country's first completely electronic court to resolve commercial transactions effectively, expeditiously, and efficiently, saving time and cost normally associated with the traditional litigation model.

The cyber court will be a model for the future delivery of legal services and will include E-filings, web-based conferencing, virtual courtrooms, the establishment of the feasibility of online dispute resolution, and the use of mediators and judges that have the skills and knowledge to render prompt and competent decisions, all with the intent to provide businesses with an alternative venue to resolve disputes.

It is also the hope and goal of the cyber court that it can be an excellent lens foreseeing other uses or areas resolving societal disputes, such as family law matters and administrative law.

Goal of Cyber Court

Michigan has traditionally been seen as a state with an economy primarily based upon manufacturing, with tourism and agriculture playing a more limited role. No one can dispute this perception despite the fact that Michigan ranks fourth in the country in Technology.¹ It is not viewed by other states as having a strong presence technologically despite its innovations which include Michigan's Life Science Corridor project for biotech research, which uses the combined research capability of the Van Andel Institute; Michigan State University, University of Michigan, and Wayne State University; a five-million-dollar Michigan capital venture fund to promote and keep new companies and more jobs in Michigan; the home for the automobile exchange for the "Big 3" that will apply advanced business-to-business e-commerce technology to the automotive manufacturing sector; the creation of the Department of Informational Technology to improve the quality and delivery of Michigan's information technology services through E-Michigan's office at www.michigan.gov;² and Oakland County's Automation Alley, a consortium of over 220 high-tech companies.

In Governor Engler's 2001 State of the State message, he set a goal outlining the importance of using technology:

Everyone is seeking "the new, new thing." The quest is on. The New Economy is transforming the old, and the new Michigan is emerging—the Next Michigan. The Next Michigan is more than a place. It's an attitude—smart and civil, confident yet compassionate, mindful of tradition yet constantly changing. . . . For inventors, entrepreneurs, small tech and IT firms, the protection of intellectual property rights is a critical concern. In a world where we can go from an idea to IPO at warp speed, we need a connected court that can keep up.³

What Would the Cyber Court Look Like?

A judge presides from his home court in Marquette, while a witness testifies from Palm Beach, Florida regarding a software contract. In the witness box, behind the bench are huge TV plasma screens where people can talk via Internet video conferencing. This is a cyber courtroom in the not too distant future.

When the federal appellate judges heard the Microsoft anti-trust case last March, the technology used included laptop computers that allowed them to communicate with their clerks or research legal documents while they listened to arguments. The court instructed the government and Microsoft to submit their court filings on a CD-Rom that could be viewed on the judges' laptops, having

Fast Facts

- Michigan's cyber court would be the country's first completely electronic court.
- The cyber court's jurisdiction would be limited to business and commercial actions.
- A defendant who is sued in the cyber court may remove the matter to a circuit court within 14 days after an answer to the complaint is due.

over 15,000 links to case law exhibits, legal motions, and even video testimony all on four disks.

Jurisdiction

As stated in House Bill 4140, the proposed cyber court jurisdiction would be "concurrent jurisdiction over business and commercial actions in which the amount in controversy exceeds \$25,000."⁴ The cyber court's jurisdiction would be limited to business and commercial actions.

In Michigan, a court may assert personal jurisdiction over the parties involved in litigation if one of the following exists: Michigan's long arms statute allows for personal jurisdiction; Consent of the parties; or presence in the state at the time process was served.⁵ The cyber court is voluntary court whereby the plaintiff and the defendant both have to consent to this venue. Also, the defendant in an action filed in the cyber court may remove the action to the circuit court not later than 14 days after the deadline for filing an answer to the complaint.⁶ In Michigan, one way to assert personal jurisdiction over the defendant is through the use of Michigan's long arms statute.⁷

Under Michigan's current long arms statute, many of the parties contemplated by the cyber court legislation will likely be covered by the existing language and therefore be subject to the jurisdiction of the cyber court. For example, auto parts suppliers shipping goods into Michigan would be covered by either the "transacting business" or by entering into a contract for furnishing materials provision. House Bill 4140 also delineates what cases can and cannot be heard, specifically excluding tort actions, including but not limited to, personal injury, wrongful death, or medical malpractice matters.⁸

Commencement of an Action

The filing of the lawsuit would be easy. The plaintiff would simply file a complaint with the clerk of the cyber court and pay a filing fee in the amount of \$200 that would be deposited with the state treasurer.⁹ As previously stated, a defendant who was sued in the cyber court may remove the matter to a circuit court within 14 days after an answer to the complaint is due.¹⁰ The Supreme Court would determine the location or locations where sessions of the cyber court would be held.¹¹

Public Access

The cyber court will be open to the public as the circuit court would be.

Virtual Meetings

The availability of the World Wide Web makes inexpensive video meetings of geographically distant parties possible. Web cameras sell for under one hundred dollars, bandwidth problems are shrinking, and any attorney who wants to can have Web access. Flying witnesses to a courtroom on the opposite coast will sometime soon be unnecessary. House Bill 4140 would require all matters to be conducted by electronic communications, including video and audio conferencing and Internet conferencing.¹²

Electronic Storage and Filing of Documents

The legal community, like other areas in society, is moving its records to an electronic format. Through ECF, "Electronic Court Filing," submitting documents to a court in an electronic format regardless of how they are stored provides benefits with a low cost of

transmitting documents to the courthouse.¹³ Alternative dispute resolution becomes online dispute resolution through cyber court.

Alternative Dispute Resolution in the Cyber Court

Since litigation is often a slow and expensive process, people and organizations for years have looked for an alternative to litigation. ADR, which has grown tremendously for the last 25 years, has now entered cyber space, and the cyber court promotes its goal.¹⁴ When Internet data transfer speeds allow for the use of teleconferencing equipment in "real time," the potential for saving money will be tremendous. The court or special mediator will only need to organize an Internet teleconferencing chat room. All parties could come and go as they wish.

Selection of Judges to the Cyber Court

In order to reflect the diversity of the judicial bench in the state of Michigan, the Supreme Court would assign judges to the cyber court for a term of at least three years, and it would be required to assign judges who not only have the experience and interest in the application of technology to the administration of justice, but who also would reflect the ethnic and racial diversity of both the population and judiciary of the state of Michigan.¹⁵

Cyber Court and the Need for New Rules

The Michigan Supreme Court is in the process of drafting rules for pleading and procedure that would be unique for the cyber court.¹⁶ The intent of the cyber court to reduce the delay and expense of litigation would require refining of discovery and case management procedure by an expedited track that could provide for discovery to be completed and a trial date scheduled within 90 days, by the time the defendants file an answer, or a standard track which would provide for discovery to be completed and a trial be scheduled within nine months of a defendant's filing of an answer. It is contemplated that actions in which preliminary injunctive relief is sought may be appropriate under either track depending on the circumstances.

The cyber court would have the power to subpoena witnesses and require the production of documents and records and may administer oaths and affirmations and take acknowledgements of instruments by electronic means.¹⁷

Publication of Judgments and Written Opinions, and Appeals to Court of Appeals

Opinions would be published on the Internet, and the clerk of the cyber court would be required to provide an electronic notice of entry of any final order for judgment.¹⁸ As it exists in the circuit court, a new trial would be granted without a jury.¹⁹

With regards to appeals, House Bill 4140 would provide a special panel of the Michigan Court of Appeals for procedures to be decided by the Michigan Supreme Court.²⁰ It would include the establishment of rules regarding expedited appeals in important cases presenting a real need for expedition.

When Would Cyber Court Begin?

While House Bill 4140 unanimously passed the House Judiciary Committee,²¹ for the law to become effective October 1, 2002, as it

is contemplated in the legislation,²² cyber court, because it is a special court of limited jurisdiction, would have to be approved by a two-thirds vote of the House and Senate Chambers.²³

The Appropriations Judiciary Subcommittee and the house have approved a judiciary technology improvement fund from which money could be used for the establishment of a cyber court.²⁴ The State Court Administrator would be required to submit a report to the legislature by October 1, 2004 on the operation of the cyber court and on whether to expand the jurisdiction of the new court to other kinds of cases.²⁵ It would further provide an oversight committee of the legislature for this new court.²⁶

Conclusion

As you look into cyber space you see that it is crowded with start up companies and established corporations trying to stake their claims on the information highway. Regardless, there is a dawning recognition among the legal community that electronic commerce, including filing, will dominate the future.

It is also true that there are many unanswered questions including the proverbial, "if we build it, will they come?" It is unlikely that the cyber court will replace our hallowed inner sanctums. However, the solution is not to stop progress and deny people the efficiencies and conveniences that the new technology affords. Rather, the solution is to seize the opportunity and utilize the cyber court as a voluntary and alternative means to currently adjudicate commercial disputes that will keep the state of Michigan in the forefront of technology use and open the door to other areas of law that afford all citizens of Michigan the benefits of technology. ♦

Marc Shulman was elected to serve the 39th District in the Michigan House of Representatives in 1998 and was reelected in 2000. He received his BA from Michigan State University and his JD from Cooley Law School. Before being elected to the Michigan legislature, he was appointed to the position of special assistant attorney general for the state of Michigan, where he served for 17 years.

Footnotes

1. MEDC Pamphlet 2001.
2. Executive Order 2001-3, Creating the New Department.
3. Engler, 2001 State of the State Address, "Building the Next Michigan," January 3, 2001, available at www.state.mi.us.
4. HB 4140 "H-3" Section 8005(1).
5. MCLA 600.701; 600.711.
6. Section 8011(1).
7. MCLA 600.705.
8. Section 8005(2).
9. Section 8009.
10. Pivots Jury Trial. Section 8013: 8019.
11. Section 8001(3).
12. Section 8015.
13. Section 8001(2H).
14. Section 8023.
15. Section 8003(1).
16. Section 8027.
17. Section 8017.
18. Section 8021(2).
19. Section 8019.
20. Section 8021(1).
21. June 7, 2001.
22. Section 8029(6)(B).
23. Mich Const Art VI, Section 1.
24. PA 55 of 2001, Section 316.
25. Section 8025.
26. Section 8029.