

Cyber Court

Legislation creating the Michigan cyber court was signed into law on January 9, 2002.¹ Michigan practitioners, anxious to take part in this initiative, followed nationwide newspaper coverage as the members of a work group convened by the State Bar drafted new court and evidentiary rules that were to dictate how the court is to carry on both the business of hearing cases and managing court operations. The proposed rules were ready in March 2002 and released for comment; however, with the downturn in the state's economy that ensued in the spring and summer of the year, progress towards making the court a working reality has been stalled. This article provides a brief background on the cyber court and attempts to direct Bar members to websites and electronic newsletters that are likely to monitor the progress being made in opening the court.

Michigan's cyber court is an ambitious experiment: the first courtroom in the nation to fully operate over the Internet using electronic document filing, web-based conferencing, and virtual courtrooms. The goal of this "first completely electronic court [is] to resolve commercial transactions effectively, expeditiously, and efficiently, saving time and cost normally associated with the traditional litigation model."²

The cyber court is one part of the state's overall strategy, which includes tax incentives and research grants, to encourage the movement of high technology companies to Michigan.³ As Governor Engler indicated in his 2001 State of the State Address, "America's first cyber court will make the next Michigan uniquely attractive to the next generation of technology-driven companies. The next Michigan has the potential to be to technology

companies what Delaware has been to public corporations."⁴

The cyber court's jurisdiction is limited, but by no means narrowly. The cyber court has concurrent jurisdiction with the circuit courts over "business and commercial actions" where the amount in controversy exceeds \$25,000.⁵ This term is defined to include disputes between owners, associates, managers, and competitors, or between a business entity and its customers, and the statute provides several non-exhaustive examples.⁶ Whatever the boundaries of this language, though, it clearly extends far beyond the "cyber"-type matters with which one might assume a cybercourt would be connected. A few categories of cases are specifically excluded, including tort actions, landlord/tenant disputes, employer/employee actions, criminal actions, and proceedings to enforce a judgment.⁷

Participation in the cyber court is purely voluntary: a nonconsenting defendant or even an intervening party may remove the case to circuit court.⁸ Moreover, only attorneys who are prequalified as "authorized electronic filers" may practice before the court.⁹

Whether and how the cyber court, as currently envisioned, will achieve its lofty goals remains to be seen. The enabling statute,

2001 PA 261, has left several important logistical questions unanswered. Proposed rules for the cyber court offer some additional clarification, but as of the writing of this article, no formal rules have been adopted. Undoubtedly the lack of funding that has delayed the court's scheduled opening date—October 1, 2002—will leave these questions unanswered for an indefinite period.

Where to Look for News and Information on the Cyber Court

Background information on the cyber court can be found at <http://www.michigancybercourt.net>. Most of the Michigan legislative and judicial links that follow below are included on this thorough site. The link entitled "Cyber Court Planning Document (August 2002)" gives a concise summary of the technical components of the new court, a schematic of proceedings, and the estimated costs to set up and to operate the court. This website also includes numerous links to general articles discussing the "spaceless, placeless" electronic courtroom.

Other suggested sources for monitoring news and developments on the Michigan cyber court include:

1. *The State Bar e-Journal*. This daily electronic newsletter, already well-known to Michigan Bar members, contains news about Bar events and members as well as case summaries. Subscribe at <http://www.michbar.org>.
2. *Michigan Lawyers' Weekly Daily Alerts*. Available at no cost to subscribers of the paper, this daily email service combs state newspapers for items of interest to legal professionals. Go to <http://www.michlaw.com/email.htm> for more information.

The screenshot displays the Michigan Cybercourt.net website. At the top, it says "MICHIGAN CYBERCOURT.NET" and "Your Information Source for the Michigan Cyber Court Law". Below this is a navigation menu with categories: Home, News, Press, and Cyber Court. There are also links for "Michigan Cyber Court" and "Michigan Cyber Court Rules". A search bar is visible. The main content area shows a list of news items with dates and brief descriptions. A sidebar on the right contains "Dykema Gossett" logo and "News, Information and Analysis" section.

3. *Gongwer News Service, Michigan Report*. Annual subscription brings daily email featuring stories on Michigan government and legal topics as well as web access to archived issues. For more information, go to <http://www.gongwer.com>.

The State of Michigan website at <http://www.michigan.gov> has links to stories of statewide importance on its homepage. The governor's office, <http://www.michigan.gov/gov>, regularly posts its press releases and many of them have addressed the cyber court and Michigan's other technology initiatives.

Cyber court statutory provisions can be read online at www.michigan.gov, as can Senate Fiscal Analysis and House Legislative Analysis for HB 4140 (codified at MCL 600.8001 et seq.). Copies and analysis of HB 6447, currently pending legislation to amend the original bill by providing a more definite focus to the court's jurisdiction, can also be found at this site.¹⁰

The proposed rules for the cyber court were drafted and submitted to the Michigan Supreme Court by the State Bar of Michigan, and were published on March 28, 2002.¹¹ Although the comment period expired in July, 2002, a date for a public hearing on the rules has not yet been set. Notice of the hearing will be posted on the Michigan Supreme Court's website. The text of the proposed rules is at <http://courts.michigan.gov/supremecourt>. (See Order 2002-04: "Proposed Addition of Subchapter 2.700 and Amendment of Various Other Provisions of the Michigan Court Rules/Proposed Amendment of Various Provisions of the Michigan Rules of Evidence.")

By far, most of the "nuts and bolts" questions concerning how to practice before the cyber court undoubtedly will be answered by its own website when the court is up and running. Proposed Rule 2.714(A) requires that "[t]he clerk of the Cybercourt . . . maintain a fully scalable website with technical specifications that meet or exceed national and international standards, and with a link to the Supreme Court's website." Here are to be found "detailed instructions concerning technical specifications for electronic practice,"¹² information on becoming an "au-

thorized electronic filer, and a copy of the Authorized Electronic Filer Agreement,"¹³ and "instructions on how to access documents filed with the court."¹⁴ In addition, the State Bar Civil Procedure Committee has submitted a recommendation that Rule 2.102A of the proposed cyber court rules include phone and email contact information for "any practitioner experiencing difficulty filing a document electronically."¹⁵

For a taste of what filing through an electronic medium is like, attorneys who have not had the opportunity to practice before one of the federal courts currently active in the Federal Judiciary's Case Management/Electronic Case Files Program ("CM/ECF") can read the FAQ material on this process at <http://pacer.psc.uscourts.gov/cmecf/index.html>. There are also training modules at the site that permit the user to go through some of the basic steps of filing a document in the federal system.

The current status of the cyber court website could not, as of this writing, be ascertained. As mentioned above, progress towards the new court's opening has been stalled by lack of funds, although the September 2002 introduction of HB 6447 would seem to indicate that the project is still very much alive. According to Marcia McBrien of the Public Information Office for the Supreme Court, "Everything has been done that can be done without funding."¹⁶ One assumes that when funds become available, the project will once again have the green light. At

this point, practitioners can only continue to monitor the websites mentioned above to determine the progress of Michigan's experimental new court. ♦

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FOOTNOTES

- 2001 PA 262, codified at MCL 600.8001 et seq.
- Marc Shulman, *Cyber Court in Michigan: An Analysis of Michigan's Proposed Cyber Court by the Bill's Sponsor*, 80-Nov Mich BJ 45, 45 (2001).
- Julia Scheeres, *Cybercourts Set for Tech Trials*, Wired News (Jan. 12, 2002), at <http://www.wired.com/news/print.0,1294,49689,00.html>.
- Governor Engler, 2001 State of the State Address, "Building the Next Michigan" (Jan. 31, 2001), available at http://www.michigan.gov/1,1431,7-103-705-1931-M_2001_1,00.html.
- MCL 600.8005(1).
- MCL 600.8005(2). Note also that the Michigan Supreme Court is "considering how to effectuate the electronic filing of documents" in courts throughout the state. The court is examining proposed standards drafted as part of a joint project of the Conference of State Court Administrators and the National Association for Court Management Joint Technology Committee. See Order 2002-37: Proposed Electronic Filing Standards at <http://courts.michigan.gov/supremecourt>.
- MCL 600.8005(3).
- MCL 600.8011(1); Proposed MCR 2.712(A)(2).
- Proposed MCR 2.711(A).
- HB 6447, introduced September 24, 2002 (sponsor Rep. Marc Shulman). House Legislative Analysis, HB 6447, October 28, 2002, available at <http://www.michiganlegislature.org>. Bill ordered enrolled on December 12, 2002. See also, *House Panel Approves Cybercourts, Jurisdiction Changes*, 41 *Gongwer News Service, Michigan Reports*, No. 219, November 13, 2002.
- Michigan Supreme Court, Office of Public Information, *Supreme Court Seeks Comment on Cyber Court Rules Proposal*, March 28, 2002. Available at www.michigancybercourt.net.
- Proposed MCR 2.714(D)(1).
- Proposed MCR 2.714(B)(5).
- Proposed MCR 2.714(B)(6).
- July 29, 2002 Letter from the State Bar Civil Procedure Committee to Corbin R. Davis, Clerk of the Court, Michigan Supreme Court in response to request for comments on Proposed Cybercourt Rules.
- Telephone discussion with Marcia McBrien, November 8, 2002.

