Cyber Courts and the Future of Justice

Edward H. Freeman

A real need exists to use the benefits of modern technology intelligently to reduce the court backlogs. Cyber courts are a viable alternative to the endless delays that plague court dockets, but only if they succeed in making courts more efficient.

This column deals with the Michigan Cyber Court, one state’s effort to streamline the judicial process through the intelligent use of new technology. “The goal is to speed up the process,” says Detroit attorney Jeffrey G. Raphelson. According to Raphelson, it takes an average of 18 months for cases to get to trial in Michigan. That is the entire lifetime for some Internet start-ups, which may fail if they do not receive a positive court decision. It has been estimated that about 70 percent of all court and law firm business could be handled in an electronic or virtual context.

The computer revolution has streamlined countless procedures in everyday life. Transactions that used to take days can now be completed online in seconds. Computer users can buy books, prescription drugs, and airline tickets from home. Investors can purchase and sell stocks and check their portfolios online in seconds.

To a great extent, the judicial system has not benefited from this new technology. Traditionally, courts have been notoriously slow in reaching decisions. Years or even decades can pass before a judge or jury makes a decision and that decision is upheld or rejected by a higher court. Part of this delay is justifiable. Courts are subject to countless rules and must proceed at a deliberate pace to provide both parties with a fair and equitable decision.

Other reasons for our slow justice system are not as commendable. Our courts are drastically understaffed, so cases must languish on the docket until the court can hear them. There are countless nuisance cases tying up these limited resources. Many lawyers will file inane motions to increase their billing hours and in the hope that the other side will grow weary of waiting and settle the case.

THE MICHIGAN CYBER COURT

In February 2001, the Michigan State House of Representatives introduced a bill to create an official cyber court within the state’s existing court system. Governor John Engler signed the bill on January 9, 2002.

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Under the legislation, the Michigan Supreme Court would appoint elected judges who had volunteered to serve on the new court. The judges would receive special technological training to assist them in their new online duties.

A major selling point for the Michigan Cyber Court was that this new court would attract more business to Michigan. Governor Engler addressed the appeal of the cyber court to technology companies. “You’re dealing with entities that move at warp speed … and we’ve got to realize that they can be created and go out of existence in the time that it takes a lawsuit to move through normal channels.” It is well-recognized that businesses need fast, efficient, and predictable courts. The new cyber court would appeal to those businesses that are interested in utilizing specialized judges and technologically advanced procedural methods to accelerate litigation.4

The cyber court was an official state court with all the powers of any other court. It could subpoena witness, administer oaths, and order parties to produce relevant documents. All matters in the cyber court would be heard before a judge with no jury.5 It would handle business and commercial cases in excess of $25,000. Although the official emphasis was to deal with information technology disputes, the cyber court could also handle other commercial matters, such as insurance, banking, contract disagreements, and battles among partners, officers, owners, directors, and shareholders of corporations. Landlord–tenant, criminal, and employment issues were specifically excluded from the cyber court’s jurisdiction. Thus, the Michigan Cyber Court was not limited to cases involving corporate law disputes but could hear a wider variety of claims.

A plaintiff could select the cyber court as its forum and the defendant could choose to move the case to a standard court within 14 days. If the defendant did not object, the court would assume that he did not want a jury trial. Neither party would ever be forced to use the cyber court. After a cyber court decision was rendered, either party could appeal the decision to a higher court using the standard appellate procedures but could not question the court’s jurisdiction over the case.

The Michigan Cyber Court proposal contained several provisions to permit litigants from other states, even if they had no physical presence in Michigan. This court was designed to allow all “hearings and proceedings to be conducted by means of electronic communications, including, but not limited to, video and audio conferencing and Internet conferencing.” Matters before the cyber court must be heard via electronic communication. “Briefs could be filed online, evidence viewed by streaming video, oral arguments delivered by teleconferencing and conferences held by e-mail.”6 Depositions could be filed by e-mail. The clerk of the court was to issue oaths electronically.

One of the major goals of the cyber court was to accommodate out-of-state parties to appear more easily.7 Out-of-state attorneys could appear via video or audio before a Michigan judge without having to hire a local attorney. The stated goal was to conduct the court proceedings via computer rather than in the courtroom.

Critics of the cyber court maintained that the new court would be nothing more than a glamorous project that would waste limited judicial resources and do little to reduce current court backlogs. At the same time as the initial funding was granted for the court, the legislature was forced to eliminate six judicial positions for budgetary reasons. There was also concern that the online portions of the court would compromise the integrity of personal information traditionally locked in courtroom cabinets. Opponents also expressed concern that the court would not attract enough cases to justify the costs of its creation.8

In 2002, the Michigan Legislature chose not to appropriate the funds needed to start up the cyber courts. “Now is not the time to expand programming and expand spending in this state. We don’t have the money.”
said Representative Charlie LaSata, calling the inclusion of funding irresponsible. To date, no further action has been taken.

DELAWARE COURT OF CHANCERY AND THE CYBER COURT
The idea of a cyber court was first announced in Governor Engler’s “State of the State Address” in January 2001. Governor Engler suggested that the new court, together with a proposed exemption from the state business tax, would play important roles in his vision of the “Next Michigan” and would attract more information technology companies to the state. Engler stated that:

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 idea to IPO at warp speed, we need a connected court that can keep up.

Tonight, I propose that Michigan boldly go where no state has gone before by creating the cyber court. In the Next Michigan, the cyber court will:

- Feature e-filings, Web-based conferencing and virtual courtrooms;
- Significantly reduce travel time and cost;
- Recognize that prompt dispute resolution means the difference between success and failure for a new venture; and,
- Use mediators and judges who have the skills and knowledge to render prompt, competent decisions.

Done correctly, 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.¹⁰ [Emphasis Added]

Michigan’s dream was to establish a specialized niche for itself as the home for technical start-up firms, just as Delaware has established itself as the corporate location for companies throughout the world. To better understand what Michigan officials thought the cyber court might have meant, it is useful to analyze Delaware’s role as the corporate home to countless companies from around the world.

More than 50 percent of the Fortune 500 industrial firms and 40 percent of all corporations listed on the New York Stock Exchange and the American Stock Exchange are incorporated in Delaware. Delaware has a complex, sophisticated body of corporate case law spanning over a century regarding such matters as management and shareholder issues and merger and acquisitions. Delaware laws tend to be pro-management when it comes to minority shareholder disputes.

There is no minimum capital requirement and no corporate income tax for corporations formed in Delaware that do not transact business in Delaware. There is also no requirement that the owners and operators of a Delaware corporation be identified in the public records of that state.

Most important, Delaware is the only state that maintains a special court system dedicated to address the concerns of the corporate and business community. The Delaware Court of Chancery is a “pro-business” court system that employs a judge rather than a jury for determination in cases. This court is internationally recognized for its long-established body of case law, predictability, and expertise in rendering sound decisions.¹¹ The court describes itself:

The Delaware Court of Chancery is widely recognized as the nation’s preeminent forum for the determination of disputes involving the internal affairs of the thousands upon thousands of Delaware corporations and other business entities through which a vast amount of the world’s commercial affairs is conducted. Its unique competence in and exposure to issues of business law are unmatched.¹²

Other states, including Wyoming and Nevada, are attempting to entice firms to incorporate there. In a side-by-side comparison, Wyoming brags that there is no business income tax, while Nevada claims that it does not share information with the IRS.¹³ Governor Engler and other supporters of the cyber court felt that a method of speedily resolving corporate disputes without the need for local attorneys would make the state more attractive, both for start-up firms
and for firms already established elsewhere. The dot.com bust of 2001 made this a less realistic goal and may have been partially responsible for the collapse of the cyber court as a viable alternative to standard litigation methods.

JURISDICTIONAL ISSUES

Proponents of the cyber court claimed that it would resolve concerns about jurisdictional issues in cyberspace. “Jurisdiction” is defined as “the geographic areas in which the court has power or types of cases it has power to hear.”14 “It is the power of the court to decide a matter in controversy and presupposes the preexistence of a duly constituted court with control over the subject matter and the parties.”15

The Internet has created a new “virtual marketplace” where the buyer and seller can live on separate continents. A potential buyer in Georgia can purchase an item from a seller in Malaysia. If the buyer is dissatisfied with her purchase and cannot use a Malaysian court, she can bring a lawsuit in Georgia. The question is: Does a Georgia court have jurisdiction over a Malaysian national, based solely on an Internet transaction?16

Jurisdiction must be proper for a court even to hear a case. If a case is brought in the wrong court, the defendant may bring an immediate challenge to the jurisdiction of the court. If the jurisdiction is inappropriate, the court must dismiss the case at the defendant’s request. Once the court has reached a verdict, the defendant can no longer bring a new objection to the jurisdiction of the court. Under the cyber court rules, the defendant would have two weeks to object to the court’s jurisdiction, in which case the matter could be brought in the standard court. If the defendant does not object, the cyber court would have jurisdiction and the defendant could not object later.

The rules of jurisdiction serve several purposes:

☐ To prevent the plaintiff from “forum shopping,” that is, bringing his case to a court with more favorable laws
☐ To make sure that a defendant does not have to defend herself in a distant place with which she has no connection
☐ To ensure that the locality most interested in the outcome of a lawsuit gets to hear it

The courts have developed methods to determine the appropriate jurisdiction when a potential conflict exists. If an out-of-state defendant has a level of “minimum contacts” or a business presence in the forum state, then the state could establish jurisdiction.

The Internet is designed so that individuals anywhere in the world can examine a Web site. For example, a Web site for a small bicycle shop in Maine is easily available to anyone with a computer in Wyoming. The following questions then must be asked:

☐ Does the mere existence of a Web site subject the bicycle shop owner to Wyoming jurisdiction, although the owner has never had contacts of any kind with Wyoming?
☐ What level of contacts with Wyoming would be sufficient to establish Wyoming jurisdiction over the bicycle shop owner in Maine?

The Michigan Cyber Court was specifically designed to remove some of the jurisdictional issues that still seem to plague commercial Internet transactions. Attorneys need not be members of the Michigan Bar, which opened the doors of the court to litigants in other states and countries. Necessary documents could be filed 24 hours a day, eliminating the lag time that frequently occurs with out-of-state parties.

As with any other court, the Michigan Cyber Court would avoid jurisdictional questions if:

☐ At least one party has had minimum contacts with the state
The facts of the case are within the categories acceptable that the cyber court will handle.

Neither party objected to using the cyber court to rule on the case.

**CONCLUSION**

The Cyber Court was Michigan’s attempt to attract out-of-state businesses to relocate to that state or at least to incorporate there. Governor Engler’s statement that the Cyber Court would allow Michigan to become the Delaware of high-tech law was unrealistic from the start. Even before the dot.coms started to experience difficulties, this effort would not have led to great success.

Delaware appeals to corporations because of its pro-business stance, the ease and anonymity of incorporation, and the Court of Chancery’s 100 years of experience in deciding complex business issues. Michigan’s Cyber Court, while it might have been a great convenience to high-tech organizations, would not have provided enough of a tangible benefit to encourage companies to either relocate or incorporate there. At best, it might have encouraged some firms to relocate or conduct commercial activity in Michigan. In the competition for high-tech firms, any state would be well advised to look at Delaware legislation and case law and determine what makes Delaware successful in attracting business.

Some of the effort to streamline courtroom procedure is technological hoopla, which will increase costs without dramatically reducing delays.

Notes

3. House Bill 4140, 91 Legislative Session (Mi. 2001). The full text is available at www.michigancybercourt.net (last visited October 20, 2004).