

# Utah Online Dispute Resolution Pilot Project

**Technical Assistance Grant: Final Report**

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## Executive Summary

With the help of a State Justice Institute Technical Assistance Grant, the Utah Online Dispute Resolution (ODR) pilot project has made considerable progress over the last eighteen months in creating an ODR web platform and improved small claims process. The system that was conceptualized by the ODR Steering Committee and is being developed by staff of the Administrative Office of the Courts will assist users in filing documents, defending claims, communicating with other parties, learning about processes, and participating in their small claims case. This will be accomplished through: guided education and evaluation of claims and defenses, communication with the other party, individualized assistance by a trained ODR facilitator, and settlement or adjudication of the dispute, all at the convenience of the parties, online, using a computer or mobile device.

The ODR Steering Committee sought to apply innovative technologies to improve access to justice, reimagining traditional formal court processes. Parties in small claims cases typically lack a sufficient understanding of judicial branch procedures to participate meaningfully, and rely heavily upon court staff as they struggle to respond to filings and meet procedural deadlines. The system attempts to break down the small claims process to allow users more control over the outcome of their case by providing additional education and time outside of court to consider their options while giving users the platform to resolve the dispute with the security of a judgment and binding agreement.

The ODR Steering Committee divided the ODR project into two phases and made other changes to speed implementation without sacrificing key aspects of the process essential to the goals that were defined by the Judicial Council and ODR Steering Committee. Since the end of

the project period in September 2017, the Steering Committee has continued final design and implementation of the ODR Process and plans to begin the roll out in April 2018.

## **Introduction**

This final report presents accomplishments of Utah's Online Dispute Resolution (ODR) project over the last eighteen months, and will detail a strategy for its continued implementation. It also will explain how Utah was able to take advantage of the resources provided by the Technical Assistance Grant to hire a project manager, as well as explain how the continued oversight and resources provided by the ODR Steering Committee and Utah's Administrative Office of the Courts (AOC) were utilized to develop the ODR web portal and process.

## **Online Dispute Resolution (ODR) Project**

Utah's Judicial Council proposed the development of Online Dispute Resolution to improve access to justice and efficiency of the court process with innovative technology. Nationally, usage of the courts is declining and new generations of court users have different expectations about what resources government should provide online and how those resources should be presented. This is an opportunity to redefine how the courts operate for future generations. The Online Dispute Resolution Project attempts to address these issues by providing a new process and program aimed at assisting users to resolve their disputes in a way that is responsive to these changing expectations and preferences.

Small claims cases were selected for the initial proof of concept, since they are relatively simple procedurally and involve a high percentage of pro se parties. It was clear from the beginning that success would depend on using technologies that are familiar to potential system users, and on adaptation of court processes to work efficiently in an online environment without sacrificing any of the rights or interests of parties. In short, ODR must be easier, faster,

and cheaper than traditional practice, while providing all parties the opportunity to be heard and treated fairly. The pilot serves as a proof of concept opportunity for ODR, and if successful, other case types will be included.

## **Development Process**

### **ODR Steering Committee**

In June 2016, the Utah Judicial Council created the ODR Steering Committee, made up of attorneys, judges, court users, and several court employees, chaired by Supreme Court Justice Deno Himonas. The committee and project manager continue to work to ensure that the project is completed and successful. Over the last eighteen months, the ODR Steering Committee and project manager have held monthly meetings and have created sub-committees and workgroups to speed development and work on discreet tasks.

During development, the ODR project manager worked with individual members of the Steering Committee and AOC staff to build the necessary web portal components and small claims processes necessary for the success of the project. Prior to each meeting, the project manager compiled a report of progress made and issues found while developing the project. These were presented to the Steering Committee and other work groups for resolution in order to continue advancement on the project. The project manager was the catalyst for these development activities and was the only person involved in all aspects of the project.

### **Project Goals:**

At the first meeting of the ODR Steering Committee, a “disruptive innovation” work group was created to find the best ways to resolve small claims cases without consideration of current court practices. Without the restrictions of current procedures, the work group was

able to envision an approach that advanced the access to justice goals of the project and put the interests of court users first, instead of deferring to judicial decision making on the court's schedule and convenience.

The goals set by the Judicial Council and ODR Steering Committee included:

1. Promote access to justice for all those involved in a small claims case.
2. Lower costs associated with a case for all parties.
3. Assist in and encourage the settlement and resolution of the dispute.
4. Provide a simple, quick, inexpensive, and easily accessible way for users to interact with each other and the court.
5. Make the system easy to understand and use for most users involved in small claims cases.
6. Provide individualized assistance through information and guided evaluation.
7. Incorporate aspects of procedural justice to ensure users feel the online system is fair and transparent.
8. Conform to the mission of the Utah State Courts and incorporate principles such as due process, equity, disclosure, need for a justiciable claim, and other traditional values of the courts.

With these goals in mind, the “disruptive innovation” work group created the framework for the ODR program, focusing on education, guided evaluation, gathering of information, settlement opportunity, judgment, and appeal. The Steering Committee relied on this framework for its design, and has made numerous improvements to ensure that it will

improve access to justice in small claims cases, and that it can create the framework to move the online process to other case types.

### **ODR Process Overview:**

The Online Dispute Resolution process and portal were designed to assist users in resolving small claims disputes in Utah courts. Small claims cases are money disputes for less than \$11,000 that have simplified rules and procedures to assist court patrons to adjudicate issues without an attorney. The ODR system allows parties to access their case online, communicate and negotiate a resolution, receive individualized assistance from a facilitator, and if necessary, involve a judge.

The ODR system will be mandatory for all small claims cases. The program guides users to their trial date at which time the trial will be held online or in a courthouse. Additional resources will be available to educate users about enforcing settlement agreements, collecting judgments and appeals.

### **ODR Stages:**

The five stages of ODR are:

- Education and Evaluation
- Communication
- Facilitation and Trial Preparation
- Adjudication
- Post Judgment



## Education and Evaluation

The main purpose of the Education and Evaluation stage is to inform users about their claims and potential defenses. Often parties are unable to resolve their disputes not because they cannot find common ground, but because they do not understand what the court can and cannot do with their claims. The ODR Steering Committee, based on statistical information collected by the Civil Resolution Tribunal (CRT) in British Columbia and other research done on the topic, have found that educating users is a very important step towards resolution, especially in small claims disputes where users are often not assisted by legal counsel.

### *Plaintiff:*

The Education and Evaluation stage begins when a plaintiff accesses the court website to learn how to file a case. The plaintiff can go through a guided evaluation to determine if the claim qualifies to be filed as a small claims case. The system helps to educate the plaintiff with what information is important regarding their claim based on their answers to a series of triage questions. To proceed to file a case, the individual will be able to set up their MyCase account with the courts in order to e-file the claim and generate a court approved summons to be served on the defendant.

The MyCase account is a new feature that is being created in all of Utah's courts that will allow users to access any case they are involved in and review the docket on those cases, as well as the actual filed documents. ODR users will have access to additional functions including chat, negotiation, document preparation, and "you are here" graphics that will help them navigate the process.

### ***Defendant:***

Once a defendant has been served with the court approved small claims summons, he or she will be instructed in setting up a MyCase account to begin the small claims process.

Once the account is established, the defendant is taken to a questionnaire in order to provide a response to the plaintiff's claim which initiates communication with the plaintiff. These questions will also help to educate the defendant by providing information that is specific to their responses. At this point, the defendant can send an email or chat to ask the facilitator questions about the process or options they have in the system.

### ***Mandatory ODR Process:***

ODR will be mandatory for all small claims cases filed during the pilot. Research by the Civil Resolution Tribunal in British Columbia and by other proposed and functioning ODR systems has shown that participation in an ODR program suffers when it is not mandatory. Understanding that some users will not be able to use ODR due to language barriers, disability, or lack of access to computers, mobile devices or the internet, the ODR Steering Committee created a process for users to opt out. If a party demonstrates that one of these barriers applies, the exemption is granted and all parties in the case will be informed of the trial date and given information about what to expect next.

### **Communication**

During the Communication stage of the ODR process, parties are encouraged to use the chat function of the application to discuss the case and attempt to find a resolution to the dispute. This ability to discuss possible resolutions without the assistance of a mediator has proven effective, both in the current small claims process and in an online mediation program run by the Department for Consumer and Business Affairs in Los Angeles County, California. In

Utah's ODR program, a facilitator will be available as soon as both parties have accessed the ODR web portal. Parties are informed during the Communication stage that information shared is considered confidential in order to help promote cooperation during these discussions.

The Communication stage of ODR is essentially a chat board where parties can communicate with each other. If the parties reach an agreement to settle the case, the facilitator will assist parties to generate a settlement agreement to be signed and filed online. If a settlement agreement isn't filed and the case isn't resolved within roughly thirty-five days, the facilitator will set the case for trial either in-person or online, depending on the complexity of the case.

### **Facilitation and Trial Preparation**

As mentioned previously, the ODR facilitator is tasked with assisting parties involved in a case to resolve their dispute and with preparing them for trial, if necessary. During the pilot, a facilitator is a volunteer who does not represent the courts or either of the parties. The ODR Steering Committee decided to include a facilitator in the process to ensure that a person was available to assist the parties through the ODR process and to inform them of appropriate options. The ODR Facilitator will provide the type of individualized assistance and education that will help to uncover the real issues that are preventing the dispute from being settled.

The ODR Facilitator is responsible to assist parties who cannot resolve their dispute in creating the Trial Preparation Document that outlines the claims and defenses, as well as facts and evidence on which the parties agree and disagree. This document will help to prepare the parties and the assigned judge for an in-person or online trial. As part of this process, the parties may upload documents, video, and audio files that will be submitted as evidence for an

online trial. The facilitator and parties must complete the Trial Preparation Document within thirty-five days of joining ODR before a trial will be scheduled.

### **Adjudication**

In the Adjudication stage of the ODR process, parties will be handed off from the facilitator to the assigned judge by the setting of a trial date for either an online or in-person trial. If a trial is set in a courthouse, it must be scheduled within seven to twenty-one days, depending on the court's calendar. If the trial is approved to be conducted online, parties will submit all of the evidence for trial with the Trial Preparation document, after which the trial can begin immediately, online.

Once parties are scheduled for trial, they will no longer have access to the chat communications that were used during the Communication stage. They will instead be redirected to an "On the Record" chat area, where the trial will be held. An online trial has no set time period, in order to allow parties to respond and present their cases at their own convenience, although they must obey the judge's deadlines and expectations during the trial. Once the judge makes a decision, the written order is explained on the chat platform prior to being posted to the case.

### **Post Judgment**

After an order has been issued, additional information and tools will be available in the Post Judgment section of the ODR web portal. Information regarding appeals, motions to enforce settlement agreements, supplemental order proceedings, and information about how to collect a judgment will be available to the parties in this location. The Post Judgment stage also will test the ability of the system to conduct a Supplemental Order proceeding online by

allowing the debtor to complete a Supplemental Order form, which would allow the collector to strike the scheduled hearing.

Other options for online assistance in filing out other forms and conducting hearings on motions to enforce settlement agreements are also being considered by the ODR Steering Committee, and may be implemented if the initial phases of the project are successful.

## **Project Development and Testing**

### **Development Issues**

The ODR project period was initially scheduled to run from June 1<sup>st</sup>, 2016 to June 30<sup>th</sup>, 2017, but due to delays in software development, the project was extended until September 1<sup>st</sup>, 2017 in hopes that testing would begin before the period expired. This did not occur, and the most recent projections indicate that pilot testing will begin in April 2018. The ODR Steering Committee has committed to continue work on this project until testing can be completed. State funds will be used for this portion of the project.

The main delays in development resulted from misunderstandings about what the IT Department needed from the steering committee to complete development of the ODR program, and the priority given to ODR over other IT court projects. Another problem has been a “moving target” created by the steering committee. Small changes in program design throughout the period have caused additional delays in programming. Delays have been a constant issue throughout the project period, and the project manager and a select group of Steering Committee members have worked with IT on a continual basis to ensure that all

questions and concerns are handled quickly and presented to the ODR Steering Committee for decision to help mitigate delay.

In an attempt to complete software development as quickly as possible, the ODR Steering Committee also decided to divide the ODR system development in two phases. Communication, Facilitation, and the defendant Education and Evaluation stages will be completed in the first phase, and plaintiff Education and Evaluation, Adjudication, and Post Judgment stages will be saved for the second phase. The steering committee and work groups will continue to work with the IT Department to ensure that all aspects of Phase 1 are complete by April 2018.

## **Testing**

The first phase of ODR testing is scheduled to begin in April 2018. This will follow one month of user acceptance testing and completion of clerk and facilitator training programs. During the first phase, the steering committee will test the Communication, Facilitation, and defendant Education and Evaluation stages. Pilot testing of the project will be conducted in the West Valley City Justice Court, which is the second largest Justice Court in the state. The test will run for up to six months, until Phase 2 can begin, which will include plaintiff Education and Evaluation, Adjudication, and Post Judgment stages.

## **Evaluation**

During testing, the ODR Steering Committee will be collecting feedback from users and facilitators about issues encountered on a weekly basis to help fine tune the program and determine if it is working as desired. The steering committee also will be collecting data to ensure that the goals of the ODR project are being met. Key indicators should include a drop in

default judgments and an increase in settlement agreements. Long term, the steering committee hopes to see a lower rate of Order to Show Cause hearings and Supplemental Order proceedings, and a higher rate of Satisfaction of Judgments filed, compared to prior years and other courts not using ODR.

The National Center for State Courts (NCSC) has received funding to evaluate the ODR project, and has requested that the steering committee provide hypotheses that cover their major criteria of face validity, efficacy, and sustainability to determine ODR's success in small claims disputes. Below are the goals and hypotheses proposed by the ODR Steering Committee for the NCSC Evaluation of the pilot project.

Goal 1: Improve Accessibility: **Hypothesis: ODR will decrease the rate of defaults as a percentage of all cases filed in the West Valley City Justice Court.**

Goal 2: Improve Efficiency: **Hypothesis: Involvement with a facilitator will increase the number of effective outcomes.** Effective outcomes include: better settlement agreements (i.e. agreements that have a lower rate of orders to show cause and supplemental orders, as a percentage of settled cases), more user satisfaction with the process, and more parties who are prepared for trial.

Goal 3: Legitimacy of the Process: **Hypothesis: ODR will improve the legitimacy of the process from the perspective of all parties involved.** This should either maintain or improve the perception of procedural fairness and legitimacy of all stakeholders involved (i.e., parties will

feel that they are treated fairly, that the system is unbiased, and that the assistance of the facilitator was neutral and helpful).

### **Communication Plan**

Throughout the project, the ODR Steering Committee has sought feedback from stakeholders about how the program could work effectively. This included discussing the project with major filers in the West Valley City Justice Court and with justice court judges across the state. Additional communication with major filers: West Valley City, justice court judges, and the public must be conducted prior to the start of pilot testing in April 2018. A communication plan for rolling out the pilot is currently being developed by the project manager and the AOC Communications Director.

### **Conclusion**

Real change is hard. Despite setbacks and delays in developing the ODR application, the conscientious, detailed, thoughtful design of the ODR Steering Committee and AOC staff will have an impact on how the Utah's courts do business, and will have a lasting effect on the design of future projects and processes. The project has also inspired other court systems to improve access to justice and court processes using technology through ODR as evident by the amount of interest shown in Utah's project. With the project set to begin pilot testing in April 2018, results from the testing of the two phases and the NCSC project evaluation should provide important information about the feasibility, success, and benefits that Online Dispute Resolution can bring to the courts.