



# **JTC Resource Bulletin**

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## Case Studies in ODR for Courts

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## Abstract

Since the JTC first released a publication on the topic of Online Dispute Resolution (ODR) in 2016, there has been a seismic shift in US courts' practical experience as well as interest in ODR. This paper highlights ODR implementations that illustrate a sample of technologies, philosophies, and approaches to the use of technology in dispute resolution.

For more information on this topic, contact [technology@ncsc.org](mailto:technology@ncsc.org).

## Document History and Version Control

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## Acknowledgments

This document is a product of the Joint Technology Committee (JTC) established by the Conference of State Court Administrators (COSCA), the National Association for Court Management (NACM) and the National Center for State Courts (NCSC).



### **JTC Mission:**

To improve the administration of justice through technology

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## Introduction

The JTC first released a publication on the topic of Online Dispute Resolution (ODR) in 2016. When *Online Dispute Resolution and the Courts*<sup>1</sup> was published, only one US court had implemented ODR, and just a handful of US courts were seriously considering it. Within a year, significant enough change had occurred in the national ODR conversation that the paper was withdrawn and updated. A companion paper, *Case Studies in ODR for Courts: A view from the front lines*, was created, featuring a cross section of successes and misfires in what were then groundbreaking ODR efforts. This paper builds on that foundational work, to continue the conversation.

Since 2016, the shift in US courts' practical experience as well as interest in ODR has been seismic. Dozens, if not hundreds of courts from large and small jurisdictions all over the US have online dispute resolution implemented for some case types and are looking for ways to expand use. Many more ODR project initiatives are underway. Some courts now have several years of ODR case data to evaluate and share.

The ODR implementations highlighted in this paper represent a variety development processes and platforms, ranging from in-house development to customizations of software created by an international collaborative. There are cloud-based SaaS products, as well as adaptations of platforms designed for other purposes, including BelInformed and Salesforce.

The following ODR implementations illustrate a sample of technologies, philosophies, and approaches to the use of technology in dispute resolution. Additional case studies will be added in coming months, with the most current examples featured at the top.

### Franklin County, Ohio Small Claims

ODR data is fueling research that is helping the Franklin County, Ohio municipal courts improve both justice processes and outcomes. At the same time, ODR is providing a level of public access and transparency not readily available through most other court processes.

Franklin County Municipal Court's small claims platform was the first court-annexed online dispute resolution platform in the US. The pilot project went live in October of 2016 and was focused specifically on addressing a single case type: City of Columbus Division of Income Tax (CDIT) cases. Historically, those cases represented the largest small claims plaintiff with the highest percentage of default judgments. Since defaults generally meant the debtor simply didn't come to court at the appointed time, ODR presented an opportunity to make participation easier and more flexible.

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<sup>1</sup> ODR for Courts version 1.0 was published in December 2016. A year later, that paper was withdrawn and updated and is now available as ODR for Courts version 2.0.

Three years and hundreds of cases later, the court can quantify benefits to parties and the court: higher participation by parties, a reduction of default judgments, and a more even distribution of positive case dispositions regardless of socio-economic factors and race as compared to the previous four years of “status quo” processes. For the first time ever, dismissals now outpace default judgments in City of Columbus Tax cases. Recognizing these and other benefits, the court began offering voluntary ODR for all civil case types in 2018.

ODR is also reaching court users from predominately low income and minority neighborhoods, increasing participation in their court cases. Today, dismissal rates across all demographics are more even, demonstrating the ability of ODR to increase access to justice. Because ODR allows parties to resolve cases from anywhere and at any time of the day or night, many cases that would not otherwise be resolved are now being resolved through mutual agreements.

**Noteworthy:**

- The court’s administrator partnered with a law professor to do an in-depth statistical review of CDIT cases. That study has been published as part of a broader review of global judicial processes.<sup>2</sup>
- Data gathered from the FCMC since the launch of ODR until September 2019 is available to the public on the FCMC ODR and Mediation Data Project website.

**Utah Courts Small Claims**

Utah built both their ODR platform and a new small claims process from the ground up. While that choice may have slowed their implementation timetable, the outcome is an impressive departure from most traditional in-person small claims processes in terms of usability for the parties in a small claims case.

To ensure the system would meet the needs of all users, representatives from both plaintiff and defendant communities were appointed to a task force. In the design phase, Utah gave unique emphasis to the needs of the defendant. The result is a simple web form in plain language that

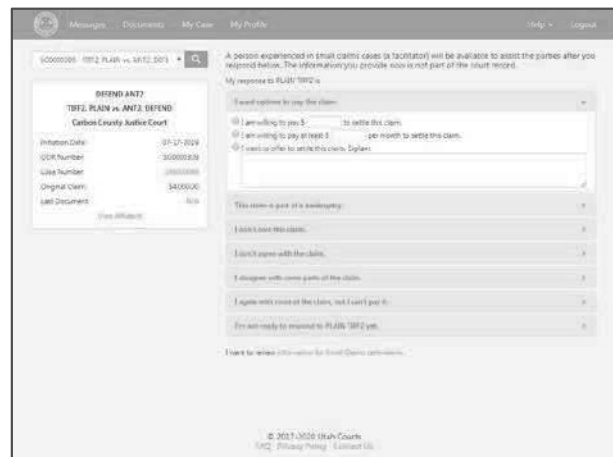


Figure 1 - Utah Small Claims initial response screen

<sup>2</sup> "Platform Procedure: Using Technology to Facilitate (Efficient) Civil Settlement." JJ Prescott and Alexander Sanchez. In *Selection and Decision in Judicial Process Around the World: Empirical Inquiries*, edited by Yun-chien Chang. Cambridge University Press, 2020.

gives users understandable options ranging from “I don’t owe this” to a negotiated settlement offer and payment terms. The project team also identified bulk filers with a certain number of small claims cases and reached out to them by letter. Feedback from that group was used to design a multiple case management interface.

Volunteer facilitators – often with legal backgrounds – were recruited to assist as “navigators.” While they do not have a role in deciding cases, facilitators are playing an important role as “impartials” on behalf of the court, working with both sides to craft a resolution. They can intervene if the parties are not communicating or if they are in conflict. Facilitators “publish” the signed agreement to the Court, or if the parties can’t come to an agreement, they create the Trial Prep document and “publish” that to the Court. Very few users have needed help with the technology, which speaks to the system’s usability.

The project launch was intentional and measured. Basic functionality (“minimum viable product”) was rolled out to a single court which was selected to participate based on judicial support, case volume, and geographic proximity to the project team. West Valley City Justice Court went live in September of 2018. Two additional courts were launched in August 2019.

One year and more than 2,000 cases later, tangible benefits are emerging: “Spillover” of cases on overscheduled court days has been eliminated. The number of hearings per case for those that do end up in court is down 44%. Court staff time per case is down 45%. Time to disposition is down 58%.

An independent evaluation of the system is underway. Pending the results of that evaluation, the plan is to seek Utah Judicial Council authorization in March of 2020 to rollout ODR to all small claims courts across the state, with full implementation anticipated within a year.

### **Noteworthy:**

- Involving key stakeholders from the start has helped Utah avoid many of the obstacles and setbacks other courts have experienced.
- ODR is not being offered as a separate path – it is *the* small claims process (“opt-out”) in counties where it has been implemented. Individuals who wish to use a paper-based/in-person process must have a compelling reason to do so: ADA accommodation, language barrier, or no access to the internet. More than 2,000 cases have been filed to date, with only 28 parties opting for paper.
- Utah is exploring options to make their ODR software available to other courts for free. Similar to open source code sharing, Utah’s software could potentially be implemented and enhanced by other courts, with improvements becoming available to Utah courts.



## British Columbia Civil Resolution Tribunal

When British Columbia's Civil Resolution Tribunal (CRT) went live in mid-2016, it handled one very specific kind of dispute: strata (condominium) claims. The CRT was the first government-sanctioned online dispute resolution body in Canada. The newly-created resolution mechanism provided 24/7 access to end-to-end dispute resolution services specific to strata claims.

Strata dispute resolution has been a gateway for applying technology to resolving a growing volume and diversity of case types. In addition to strata claims, the CRT now handles all small claims disputes up to \$5k, many cooperative association/society disputes, and eligible motor vehicle injury disputes up to \$50k.

Like Utah's small claims court, the CRT is an "opt-out" system: individuals who wish to use paper pay an additional paper filing fee of \$25 (Canadian). More than 95% of participants use the online process.

During system design, the CRT development team anticipated that peak usage would be after business hours and on weekends. However, web analytics show that the majority of users are accessing CRT services during traditional business hours, and more often than not, through tablets and smartphones.

### Noteworthy:

- To date, the CRT has provided legal information to almost 100,000 citizens and diverted approximately 11,000 disputes from British Columbia's Provincial Court system, freeing up judicial resources for criminal and family cases.
- The public can easily browse or search decisions on the CRT website, providing an extraordinary level of transparency.
- The CRT uses web analytics to understand how clients are experiencing the website, and human-centered design in the development of its online interfaces, forms, processes, and rules. They are committed to continuous improvement, and actively seek feedback.



Figure 2 - CRT dispute resolution process

## Quebec Consumer Complaints - PARLe

Quebec's Consumer Protection Office launched their dispute resolution platform in 2016. Cleverly named PARLe (Platform to Assist in the Resolution of Litigation electronically), it works the way it sounds: "a discussion between people who disagree, in order to try and find a way of solving a problem."<sup>3</sup> The system is free and voluntary ("opt-in"), with jurisdiction over consumer disputes related to products or services that were delayed, defective, or not delivered according to contract or advertisement, or were in some other way unsatisfactory. The system uses plain language web forms to guide consumers easily through the process of filing their complaint.

The system was developed by the University of Montreal's Cyberjustice Laboratory and adapted for use by the province's consumer protection agency. It was originally launched through a pilot project involving 17 merchants. Other merchants quickly signed on. Anecdotally, one of the first consumers to use the platform happened to be a journalist who was so pleased with how her complaint was handled through PARLe that she wrote a newspaper piece about her experience. The newspaper article seems to have accelerated the consumer protection agency's efforts, as non-participating merchants reading the article saw platform participants as having an unfair competitive advantage.

Merchant participation has increased steadily since the platform's launch. Today, more than 150 merchants – including big box retailers, furniture and appliance stores, home improvement service providers, and even used car dealers – are using PARLe as their consumer complaint resolution mechanism.<sup>4</sup>

### Noteworthy:

- If the complaint isn't resolved through direct consumer-to-merchant negotiation, trained mediators who are members of either the Bar of Quebec or the Chamber of Notaries can intervene.
- The platform facilitates consumer dispute resolution "regardless of the value of the good or service in question,"<sup>5</sup> thereby increasing access to justice. To date, settlements have ranged from \$16 to more than \$200,000.
- The PARLe system is open source and modular. Other implementations of the platform include Medicys by the French National Chamber of Bailiffs and the Condominium Authority Tribunal in Ontario.

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<sup>3</sup> Oxford Advanced Learner's Dictionaries, Oxford University Press.

<sup>4</sup> How to access PARLe. *About the Office*. Office de la protection du consommateur. Government of Quebec. Updated 7 November 2019. Web.

<sup>5</sup> Assessment of the Consumer Protection Office's online mediation project after 3 years of implementation, report issued by Minister of Justice, Sonia LeBel. 2 December 2019.

## Netherlands Uitelkaar.nl

Uitelkaar.nl is an online divorce process created by Justice42, a private organization comprised of some of the key players in Rechtwijzer 2.0, the Dutch Legal Aid Board/HiiL/Modria ODR collaboration that dissolved in 2017. The organization works with a variety of government and industry partners including The Hague Institute for Innovation of Law (HiiL); Ministry of Justice and Security; a number of legal, financial, and relationship consulting groups; and Raad voor Rechtsbijstand (Legal Aid Council). While no longer a financial partner in the project, the Dutch legal aid organization subsidizes use of Uitelkaar.nl for people who qualify for discounted legal services.

The idea behind the system is to help people create their own custom divorce agreements and parenting plans while ensuring those agreements are legally sustainable and fair. Alimony and child support calculators are part of the platform. If users have questions, they can request the assistance of a case manager. When issues prevent users from reaching an agreement, they can ask for a mediator or other specialist to join the platform. At the end of the process, a Uitelkaar lawyer reviews the agreements and presents them to the court. Parties do not ever need to set foot in a courtroom, making the process both flexible and convenient. Fees for Uitelkaar.nl are €800 Euro (€400 for each party), less than half the cost of traditional mediation, which is currently the most common mechanism for handling uncontentious and uncontested divorces.

Uitelkaar.nl is an “opt-in” process, one of several pathways available for obtaining a divorce in the Netherlands. The organization receives referrals from the legal aid board, and also markets the platform directly to consumers through Google ads, bannering, and offline marketing. They currently attract approximately 80 cases per month but could rapidly scale to handle a larger portion of the country’s uncontested divorces, which number about 25,000 annually.

In the future, Uitelkaar may expand the variety of case types it handles, taking on dispute resolution for building permits, building code infractions, or small claims-type cases. The creators of Uitelkaar also envision making the platform, which is a customization of BelInformed, available for implementation in other countries.

### **Noteworthy:**

- The platform is self-sustaining financially, addressing one of the main issues that swamped its predecessor, Rechtwijzer.
- Until Uitelkaar, mediation was the preferred mechanism for subsidized divorce assistance. Today, low income patrons are also referred to Uitelkaar with approximately 90% of the fee subsidized by the legal aid board.

## Connecticut Traffic

Connecticut is using ODR traffic court as a way to improve public safety. The Connecticut Judicial Branch's Superior Court Online Ticket Review has reduced the number of days from citation to adjudication from more than 180 to less than 60. In addition, the online process allows the prosecutor to better tailor sanctions for defendants based on driver history, charged offenses, and other relevant factors.

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Figure 3 - Connecticut Online Ticket Review, Prosecutor Docket Summary

Connecticut's Online Ticket Review program is "opt-in" and 76% do. Participants can either plead guilty and pay the fine online or plead not guilty and use the website to tell their version of the incident, including uploading photos or other documentation. A prosecutor reviews the facts of the case using live data from the Connecticut Department of Motor Vehicle's license and registration databases, the court's case management systems, and any crash report information uploaded by law enforcement. In approximately 16% of the cases, the State chooses not prosecute the case based on the information provided by the driver. Citizens are having success using the system to "have their day in court" without taking time away from work and family obligations to do so.

Before the online system was implemented, an average of 200 cases were decided during each three-hour court session, or an average of less than one minute per case. Because of time constraints in the face-to-face setting, it was not possible for the prosecutor or the judge to ensure the accuracy of information presented. Through the ODR platform, the prosecutor has ready access to driver history, license and registration status, subsequent infractions, or pending cases and can take whatever time is necessary to gather and review relevant information.

If the case qualifies, the prosecutor makes a settlement offer within two weeks. Eighty percent of motorists/defendants accept the offer and are immediately directed to a payment page.

### **Noteworthy:**

- Since it launched in 2018, more than 23,000 people have participated in the program. With routine cases now being handled online, prosecutors have more time to focus on habitual offenders, who don't qualify to use ODR and must come to court.
- Due to the traffic safety implications, Connecticut was awarded several grants from the National Highway Transportation Safety Administration.
- The Connecticut Judicial Branch was recently awarded a grant from the US Department of Transportation's Federal Motor Carrier Safety Administration to enhance the program for adjudication of cited individuals holding commercial driver's licenses.
- The Online Ticket Review Program was honored with a prestigious award by the Governors Highway Safety Association for their "outstanding public safety accomplishments."<sup>6</sup>

### **New Mexico Debt and Money**

In August 2018, the New Mexico Supreme Court approved an ODR initiative intended to help speed up resolution of debt and money due cases as well as reduce demands on judges' dockets. The goal was to go live with a pilot by the end of 2018 with one "simple" case type, learn from that experience, and then roll out additional case types. The justices were able to arrange a special legislative appropriation to cover per-case fees during the pilot. Going forward, a budgetary line item for ODR will cover costs so that ODR users do not pay additional fees.

New Mexico has a unified court system and a single case management system. It seemed a natural fit to add an ODR module offered by the case management vendor. Debt money due (DMD) was selected as the pilot case type because those cases are time-consuming for the court but are straightforward to resolve. If those cases could be resolved online, the justices believed clerks and judges could then give more attention to family law, accident, breach of contract, and other more complex cases.

Three judicial districts were identified for a pilot project: the state's largest judicial district and two smaller, more rural districts. Court managers, judges, staff attorneys, and court clerks from the pilot districts were involved in the project, along with staff from the state's Judicial Information Division. Family members and friends of judicial employees were invited to test the system, as were plaintiffs' attorneys, the state bar, and representatives from bulk filers.

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<sup>6</sup> "Connecticut Judicial Branch's Online Ticket Review Program Receives National Award." *Judicial News Archive*, State of Connecticut Judicial Branch, 29 Aug. 2019, [www.jud.ct.gov/HomePDFs/JB\\_Online\\_Ticket\\_ReviewAward.pdf](http://www.jud.ct.gov/HomePDFs/JB_Online_Ticket_ReviewAward.pdf).

As the December rollout neared, consumer legal advocates expressed concern that debt collectors would be able to use the system in a way that would disadvantage self-represented litigants. The judiciary had its own concerns about ease of use and ensuring the ODR interface was helpful to all parties. To address those concerns, the pilot was delayed, and self-help resources were added, including information about consumer rights in debt collection.

In DMD cases, plaintiffs are almost exclusively bulk filers and defendants are primarily low income, self-represented, and sometimes transient. The paper service process is still a barrier. A case can't be referred to ODR until service and answer are filed, and it is common for service to take months. Participation in the ODR platform is voluntary, similar to the way mediation is offered throughout the state. Mediators are also available to assist parties using ODR.

Some bulk filers have not been enthusiastic about participating online because the system, at the request of the judiciary, delivers only stipulated agreements and dismissals. If a defendant defaults on their agreement, the plaintiff must then petition to reopen the case to obtain an enforceable judgment from the trial court.

**Noteworthy:**

- Paper was the official record of the New Mexico courts during the initial pilot, but rules have now been modified to permit electronic signatures, paving the way for a more convenient, fully online process.
- Since many people in New Mexico rely on public libraries for internet access, the state judiciary's communication officer visited local libraries to introduce the program to librarians and leave brochures for library patrons who need assistance with the ODR process.
- Issues with incorrect or missing email addresses and email spam filters have been barriers that may be resolved by using the individual's cell phone number as the contact point. Text messaging capability is expected in the first quarter of 2020.
- Initial input for the system came almost exclusively from those connected in some way to the legal system. Version 2 planning is underway, and New Mexico AOC staff anticipate seeking broader input from partner agencies and the community.

## Summary

As reflected in these case studies, courts have many options for applying technology to dispute resolution: opt-it or opt-out, build or buy, onsite or cloud, integrated with case management or stand-alone, and more. ODR is being layered onto existing processes or leveraged as part of a visionary overhaul of court rules and processes. Design and testing efforts have actively included or inadvertently marginalized some user audiences.

Court managers who have been part of these and other ODR initiatives have shared hard-earned insights:

- Establish baseline numbers before implementing ODR.
- If data quality is an issue, have a plan to address issues for current data as well as new data coming into the ODR system.
- Whenever possible, make ODR “opt-out” versus “opt-in.”
- Involve partner agencies and potential users all throughout the project.
- Reduce process complexity before / as part of an ODR initiative.
- Start with a minimum viable product, not every desirable feature. Plan for enhancements.
- Implement a single case type. Learn the lessons and then expand the scope.

The JTC will update this paper with additional case studies as new project successes and challenges emerge.

For more information on this topic, contact [technology@ncsc.org](mailto:technology@ncsc.org)

## **Appendix A: ODR Resources**

### ***Video Presentations***

Online Courts and the Future of Justice  
Professor Richard Susskind OBE (United Kingdom)

Access to Justice and Technology Summit  
Shannon Salter, Civil Resolution Tribunal (British Columbia)

Empowerment Technology & Justice System Users  
Margaret Hagan, Stanford Legal Design Lab

### ***Presentation slides from the 2019 International ODR Forum***

It's Broken; Fix it: Creating an A2J Ecosystem  
Justice Deno Himonas, Utah Supreme Court

Measuring the Societal Effects of ODR in State and Municipal Courts  
Maximillian Bulinski

Online Adjudication of Traffic Offenses  
Stacey B. Manware, Connecticut Judicial Branch

Franklin County Municipal Court Data Project  
Alex Sanchez, Franklin County (Ohio) Municipal Court

Usability Testing and ODR  
Sarah Mauet, Chris Griffin, and Stacy Butler, University of Arizona Innovation for Justice

ODR as a Public Service: The Access to Justice Driven Canadian Experience  
Professor Nicolas Vermeys, Université de Montréal and  
Professor Jean-François Roberge, Université de Sherbrooke

Online Dispute Resolution: An Arizona Perspective  
Nicole Laconte and Cathy Clarich, Arizona Administrative Office of the Courts  
Tracy McElroy, Pinal County

The European Union Approach to Consumer ODR  
Emma van Gelder