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Utah's Online Dispute Resolution Program

Deno Himonas

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Utah's Online Dispute Resolution Program

Justice Deno Himonas

ABSTRACT

This article by Utah Supreme Court Justice Deno Himonas describes Utah's Online Dispute Resolution or ODR system. Launched in September 2018, Utah's ODR system is available to litigants who have small claims disputes that involve \$11,000 or less. The ODR system has been designed to provide "simple, quick, inexpensive and easily accessible justice" that includes "individualized assistance and information that is accessible across a multitude of electronic platforms."

This article describes the history and philosophy behind Utah's ODR system and includes a number of screen shots that show what an ODR litigant will see. Utah is the first U.S. state to deploy an ODR system capable of handling an entire dispute, as opposed to a discrete part of a dispute such as mandatory mediation. Utah's ODR system undoubtedly will be an example for court systems throughout the country.

In addition to the screen shots that show the litigant's view, this article includes screen shots that illustrate what the ODR facilitators will see. One of the most notable and important aspects of Utah's ODR system is its use of trained facilitators to help the parties resolve their disputes. As the article explains, "[a]s soon as both parties have joined the web portal, a facilitator is assigned to the case." The facilitators, who undergo extensive in-house training, help facilitate the preparation of a settlement document or, if the case does not settle, a trial preparation document.

This article demonstrates the Utah Courts' commitment to access to justice and its efforts to remain relevant in a changing world. Utah's ODR system allows unrepresented parties and represented parties to communicate asynchronously or in real time. It removes location barriers which is extremely important for a state the size of Utah with a widely dispersed population. The ODR system reduces information asymmetry through its use of expert systems and trained facilitators. In sum, after reading this article, the reader will understand why Utah created

its new ODR system, the philosophy and assumptions that drove its design, and the logistics of how it will work.

Utah's Online Dispute Resolution Program

Justice Deno Himonas*

First, thank you for the invitation to be here today and for the courtesy that's been extended by the Law Review. I greatly appreciate it.¹

Nelson Mandela wisely and famously observed that "A nation should not be judged by how it treats its highest citizens, but its lowest ones." This reflection applies with like, if not greater force, to our judicial system. And it's with this metric in mind that I want to focus my remarks this afternoon on what we're doing in the Mountain West to narrow the access-to-justice gap, particularly for the poorer and less educated segments of our population.

Some three years ago, I spoke at the University of Utah Law School about access-to-justice issues and the importance of pro bono services. I began my remarks with a stab at some legal humor that I siphoned from the Internet. My clerks, when I ran this joke by them, by the way, referred to it as more of a stabbing of, than a stab at, legal humor.

But in any event, it goes something like this: As usual, I'm running late in the morning, I'm a bit stressed out and I get really stressed out when I go outside and try to turn on the car and it won't turn over. So I phone a taxi and I ask the taxi to take me to the Halls of Justice. "Where are they," asked the taxi driver. "You mean to tell me you've been a taxicab driver in this city for how

* Justice Deno Himonas has served on the Supreme Court of Utah since February, 2015. Prior to his appointment, he served as a trial court judge in the Third District Court for the State of Utah for more than ten years. Justice Himonas has served as chairperson of the Litigation Section of the Utah State Bar, co-chairperson of the Third District Court's Pro Bono Committee, and a member of the Judicial Conduct Commission. Justice Himonas also has taught as an adjunct professor at the University of Utah S.J. Quinney College of Law. Justice Himonas has been a leader in developing Utah's forthcoming licensed paralegal practitioner programs too.

1. Justice Himonas spoke on March 16, 2018, at the *Dickinson Law Review* Symposium on unrepresented parties and access-to-justice issues. He lightly edited his remarks, reproduced here, to improve readability and to correct minor errors.

long and you don't know where the courthouse is?" And the response was, "Oh, I know where the courthouse is, I thought you said you wanted to go to the Halls of Justice."

So we all know the aphorism, right, that behind every joke is a grain of truth. Let me suggest to you behind this bit of humor there lies a boulder. And what I mean by this is that our judicial system is often perceived as anything but just, particularly by those who face oppressing economic and other barriers to accessing it. And as I'm going to describe in just a moment, this perception is far from an unfair one.

Another take-away of this joke that just recently struck me is this: When I told it three years ago at the University of Utah Law School, the reference to a taxi made sense. Right? But in the days of Lyft and Uber, it's quickly become an anachronism. And it has highlighted for me that we not only have to constantly refresh our humor to keep it relevant, but our legal system, too. And a big part of what I'm going to speak to you about today is an attempt in Utah to do that—keep our legal system relevant—through Online Dispute Resolution.

Before I go there, though, I want to take a few minutes and talk to you about the access-to-justice gap. I'm going to reiterate some statistics that you've already heard. After that I want to talk to you about Utah's Licensed Paralegal Practitioner program. I think we'll be second in the nation, albeit a distant second from the efforts going on in Washington that you're going to hear about later this afternoon.

I also want to talk to you about a spin-off of that program, which I'm referring to as form reform. I'll then spend the majority of my time talking to you all about Online Dispute Resolution, or ODR.

All right. We know from studies, rankings, and our observations of various data points that a large segment of our population just can't access or declines to access our civil justice system. Let me give you some concrete and sobering numbers, starting with what was referred to earlier today by Professor Mosten, where we sit on the Rule of Law Index. Each year the World Justice Project puts together this index, and according to their website—and I'm quoting—"Each edition of the WJP Rule of Law Index relies on more than 110,000 household and expert surveys to measure how the rule of law is experienced and perceived in practical, everyday situations by the general public around the world. Performance is assessed using 44 indicators across eight categories, each of which is scored and ranked globally and against regional and income peers."

So as a whole, the United States fares okay on the index. I believe there are about 113 countries. And I also believe that we ranked about 18th overall. Not terrible, right? It's not great, but it's not terrible.

The glaring exception, though, is our access and affordability of our civil justice system. As Professor Mosten noted earlier this morning, we are 94th out of 113 countries. That should sober us all. And it's not just that the Rule of Law Index is some kind of a weird outlier; we are, by any metric, falling desperately short of serving a large segment of our population. Robert M. Ambrogi in a 2015 article in the American Bar Association Journal wrote—and I quote—“Multiple state and federal studies show that 80 to 90 percent of low and moderate-income Americans who face civil problems are unable to obtain or afford legal representation.”

And when you look at the specific case types that these individuals have to face, the numbers are even worse. In Utah, in the Third District, which I served as a trial court judge for ten years, for example, 99 percent of the respondents in debt collection cases, which make up the bulk of cases that are filed, are unrepresented, 98 percent of the respondents in landlord/tenant cases, and in family law cases in around 60 percent of those cases either one or both of the parties are unrepresented.

And let me talk to you about the toll that this takes on our legal system from the perspective of a trial court judge, and let's just talk about unrepresented family law matters. First, the unrepresented parties will routinely fill out forms, some of which are confusing and some of which are just plain wrong, in a way that requires them to be rejected by the judicial officer.

So bad forms aside—and that's something that I want to address in just a moment—common errors include ignoring the mandatory waiting period in our state for divorce, failing to provide the required financial information for child support calculations, and ignoring custody and relocation issues. So as a consequence, as I mentioned, the forms are repeatedly discounted or disallowed.

One or two things ultimately happens; one, the unrepresented parties send the forms back in, they get disallowed again, they send them back in, they get disallowed again; finally the judge or the domestic relations commissioner will haul the individuals into court so they can work through the forms together. Or two, the participants—and this happens more often than not—get frustrated, and they just don't complete the process so they end up abandoning the divorce proceedings. Both scenarios lead to serious inefficiencies and they clog our system.

This is just the tip of the cost to our system. Think about, just as another example, the pro bono cost.

Back to the family law setting, we have a pilot project that's a wonderful program in Utah where the domestic relations commissioners will have an order to show cause calendar for those individuals who are just getting frustrated and no longer pushing their case through.

They come in and meet volunteer lawyers who represent both sides right there at the courthouse, help them complete their forms, whatever it takes to complete the matter.

It's a wonderful idea. But think about what it means in terms of other pro bono efforts. Pro bono is essentially a zero-sum game. I mean, once those lawyers have filled their quota of hours, they're unlikely to make additional commitments, and that means they're not available to help the poor complete an adoption, help an illiterate parent with three kids contest their unlawful eviction, or to aid the Innocence Project in challenging a wrongful conviction. Their energies are not unlimited.

In Utah, we've recently undertaken a number of initiatives to try to address this problem. Let me highlight three in particular; the first is the Licensed Paralegal Practitioner profession that we're building. In the spring of 2015 and on the heels of Washington's initiation of such a program, the Utah Supreme Court took up the call to examine working strategies to authorize individuals to provide specific legal assistance in areas currently restricted to lawyers.

To this end, we formed a task force that consisted of legislators, a representative from the executive branch of our government, bar leadership, a public interest lawyer, a solo practitioner, a trial judge, a domestic relations commissioner, a community representative, the Dean of the College of Law at the University of Utah, and myself.

Early in the evaluation process, we split into two groups, one group looking at Washington's LLLT program and one group evaluating all other emerging strategies, including the New York Navigator Program that we've heard about. We were terrifically aided in our efforts by a Dr. Tom Clarke from the National Center for State Courts, who delivered a white paper on developing the ecosystem necessary to try to bridge the access-to-justice gap.

The highlights: the task force recommended a modified version of the Washington LLLT program, a program we're calling the Licensed Paralegal Practitioner program. These paralegals will be authorized very shortly to assist individuals in areas of family law, landlord/tenant law, and debt collection. Specifically, the task force recommended that the LPPs be licensed to assist and advise the

individuals with which forms to use, how to complete the forms, make entries on behalf of the client, sign and file and serve the forms, obtain and explain any necessary documents, advise the clients about anticipated course of proceedings, and advise them about the meaning of court orders. They'll be able to form direct, professional relationships with the clients and won't have to operate under the auspices of a lawyer. They'll be able to accept service for the client, if the client so chooses, negotiate for the client, and participate in mediation.

The one thing they won't be able to do is cross the bar. They will be allowed to sit in the audience and, at an appropriate juncture if a break is taken, sit down and perhaps explain things to the client, but they won't be able to make active representation.

Now, unless grandfathered in, the task force recommended that these LPPs have to take specialized education in each of the three areas—and they don't, by the way, have to be licensed in each of them; they can pick and choose, elect to just do family law, for example, or debt collection—they have to possess a JD or associate's degree or higher with a paralegal or legal assistant certificate from an approved program, they have to pass a national examination as well as a state examination for each of the specific areas as well as an ethics examination. And then they have to obtain a certain amount of experience working under the supervision of a lawyer or internship or completing some other form of practical experience, and they will be under the auspices of the Utah Supreme Court.

I'm pleased to announce that we are almost there. All of the rules have been drafted, circulated to the bar, and approved by the supreme court. Let me back up a second. We thought they had been circulated to the bar, but for a programming error that we recently discovered, so they have been recirculated now and we're prepared to vote on them later this month.

Many of the relevant forms have been approved by our judicial council. All of the forms, I understand, in the landlord/tenant area and the debt collection area are ready. And I anticipate, the forms in family law will be done this summer.

We have an enthusiastic partner, one of the local colleges, that will offer the courses starting in, hopefully, January of next year. We're in the process of preparing the course materials now and recently obtained the funding in order to hire a national provider to write the tests in each of the specific areas.

I'm anticipating that we will grandfather in our first LPP in the fall of this year. I'm also anticipating that we graduate our first

classes in the spring of next year. We recently completed a market survey of all the paralegals in the state and some 200 expressed an interest, a meaningful interest, in becoming a licensed paralegal practitioner. For a community our size, that's great.

Let me turn for a second before I move on to Online Dispute Resolution to one of the great benefits that has flowed from the LPP program, and that is form reform. So as I mentioned, the LPP's ability to provide legal services will be corralled by court-approved forms. And with the formation of the LPP profession, there obviously came an immediate need to gather the existing forms in the areas, and this led to the formation of a task force.

This is an area, by the way, in which we in Utah were woefully behind the curve. We may be on the cutting edge when it comes to LPPs or ODR, but when it comes to forms, we hadn't touched them in years.

When I was a trial court judge, I was using forms that, when I looked at the statutes that were reflected in them, some of them had actually been repealed. I started creating my own forms. And I wasn't unique; trial court judges across the state were doing this, so we had no consistency. The job of this task force is to gather those hundreds if not thousands of forms, get rid of the old, update the new, put them in plain language, keep them updated and make them available to everyone, unrepresented as well as represented.

Frankly, I think Hercules had an easier job mucking out the Augean stables than this forms committee.

Let me talk to you now about what I think most of you are really interested in, and that is our Online Dispute Resolution program. We're going to be, I believe, the first in the country to launch this soup-to-nuts approach. And I am as enthusiastic about this program as any that I have ever been involved with. We have internally developed a robust platform that we're going to begin testing next month and hope to roll out in our small claims court the following month.

So why ODR? Well, we believe it's going to keep the courts relevant. We believe it's going to increase the ability for unrepresented parties and represented parties to communicate asynchronously or in real time. It's going to remove location barriers—and for a state the size of Utah and where its population is spread out in very remote areas, extremely important—reduce information asymmetry through the use of expert systems and a facilitator, and allow us to mix technologies.

Let me back up and explain what some of these things mean. You, the user, will see some screen shots in a minute representing

where you'll be able to go and what you'll see once you've been served with a complaint. And you'll be able to do this on your smart phone.

You'll be able to answer the prompts whenever you want. You won't have to show up to court. You can communicate at 3 a.m. if you'd like. You can communicate with the facilitator then if you'd like or with the court. You can upload documents and other written material that will become part of your file, and you can use these to actually put on a virtual trial if that's what you elect to do.

Before you get to this point, however, you're going to have the benefit of a facilitator that I'm going to talk about in just a minute. And eventually, we hope you'll have the benefit of expert systems.

We've elected to roll out the program in our small claims court first. In Utah they're limited to claims of \$11,000 or less. The parties are almost always both unrepresented.

We have a simplified set of rules. Typically, there are only two parties involved, and often the cases are debt collection cases.

These are the goals that we set for ourselves and by which we'll measure whether we we're successful or not: Promote access to justice—so we want to make sure we're providing simple, quick, inexpensive and easily accessible justice; individualized assistance and information that is accessible across a multitude of electronic platforms; and allowing parties to participate whenever they want.

We have some benchmarks for the perception of procedural justice in the state. We want to improve that perception. I think it's pretty good right now, but we can always do better.

And we want to lower costs associated with resolving our small claims disputes and to encourage and assist in the settlement and resolution of those disputes.

A great number of these cases that are filed resulted in default, I think 85 percent of the debt collection cases that get filed. That comes as no surprise to anyone. We'd like to make a significant dent in that number and think we will by empowering the unrepresented to participate in a different way in our system and with the help of some guidance.

We came up with this model through a Disruptive Innovation Group; really we called it the Wild Animal Group. And their charge at the beginning was throw the rules out the window, right, we will change the statutes, we will change the rules of procedure, we will make whatever enactments are necessary; you build the system that you think is best and then the change will come.

And this is the model that they developed: Educate and evaluate, gather information, provide a meaningful settlement opportunity, and then either the parties settle or the judicial officer makes a ruling. And if the parties don't like the ruling, they can always appeal—it's a *de novo* appeal from small claims court in Utah to our district court.

We've reduced that model to this: Educate and evaluate, so we'll provide some information up front, and, eventually evaluate the problem, provide self-help resources, access to other resources that they can go to to learn about their claim, access to LPPs, for example, to unbundled legal services, or to fully bundled legal services.

We then turn to a communication platform where the parties will be allowed to communicate in an attempt to settle their dispute without any intervention from the court.

The key, I think, to our success, lies in the facilitator. These will be individuals who are specifically trained both not only to mediate but, it is my hope, to answer some basic questions as well, that is to provide, at least in my view, some limited legal advice in the process. If the parties can't come to a conclusion, then and only then they go to trial. A judicial officer will have an option whether to do the trial traditionally, or to do it, as I mentioned earlier, online, that is through uploaded documents and written positions you want the judicial officer to evaluate.

So, again, the first step is going to be to educate and evaluate the consumer. The consumer is going to be directed to answer some simple questions that will provide relevant information about their claims and defenses, a guidance system to allow them to be involved in the small claims process and can save their answers to help populate necessary documents if need be.

And this is what—can you see that? It's awfully small, I'm sorry. This is what the page will look like. So you've been served with a complaint and it tells you how to log on to the system. And then this is what you're going to see—in Figure 1—; I want to set up a payment plan, I've already paid this claim, this claim is part of bankruptcy, not my debt, I want options, I'm not ready to respond.

FIGURE 1

The screenshot shows a mobile application interface for the Utah State Courts. At the top left is the Utah State seal, and at the top right is a hamburger menu icon. The main heading is "Utah State Courts". Below the heading, there is a paragraph: "A person (facilitator) experienced in small claims cases will be available after you respond to MONEY 4 YOU. The information you provide now is not part of the court record." This is followed by the prompt "My response to MONEY 4 YOU is". There are seven dark grey buttons with white text, each representing a different response option: "I want to set up a payment plan or make an offer to settle the claim.", "I have already paid this claim.", "This claim is part of a bankruptcy.", "This is not my debt.", "I want options to respond to MONEY 4 YOU's claim.", "I'm not ready to respond to MONEY 4 YOU yet.", and "I want to review information for Small Claims defendants." At the bottom, there are two buttons: "Skip For Now" on the left and "Send Response" on the right.

Say you want to set up a payment plan.² So often you will, in these debt collection cases—I’m using debt collection as an exam-

2. See Figure 2.



ple because of how many of those cases populate small claims—but small claims is certainly not limited to that.

FIGURE 2

The screenshot shows a mobile application interface for the Utah State Courts. At the top left is the Utah State Seal, and at the top right is a hamburger menu icon. The main heading is "Utah State Courts". Below this, a message states: "A person (facilitator) experienced in small claims cases will be available after you respond to MONEY 4 YOU. The information you provide now is not part of the court record." The prompt "My response to MONEY 4 YOU is" is followed by a large grey button: "I want to set up a payment plan or make an offer to settle the claim." Below this button are four radio button options, each with a text input field for a dollar amount: 1. "I can pay a one time amount of \$ [0.00] to settle the claim." 2. "I can make monthly payments of \$ [0.00] to settle the claim." 3. "I can pay this amount now \$ [0.00] and make monthly payments of \$ [0.00] to settle the claim." 4. "I want to write my own plan to settle the claim." Below the radio buttons is a large text input area. At the bottom of the form are four more grey buttons: "I have already paid this claim.", "This claim is part of a bankruptcy.", "This is not my debt.", and "I want options to respond to MONEY 4 YOU's claim."

You acknowledge the debt, you want to set up a plan but you just can't afford to pay it. So this gives you an opportunity to explain that, prompts you to explain that to the other side. Maybe you have already paid it, see Figure 3, so you provide the explanation and, if necessary, upload the documents; or it's part of bankruptcy, see Figure 4, then it prompts you, simply, what's your case number. So it will walk you through each of those.

FIGURE 3

Utah State Courts

A person (facilitator) experienced in small claims cases will be available after you respond to MONEY 4 YOU.

The information you provide now is not part of the court record.

My response to MONEY 4 YOU is

- I want to set up a payment plan or make an offer to settle the claim.
- I have already paid this claim.
-
- This claim is part of a bankruptcy.
- This is not my debt.
- I want options to respond to MONEY 4 YOU's claim.
- I'm not ready to respond to MONEY 4 YOU yet.

I want to review information for Small Claims defendants.

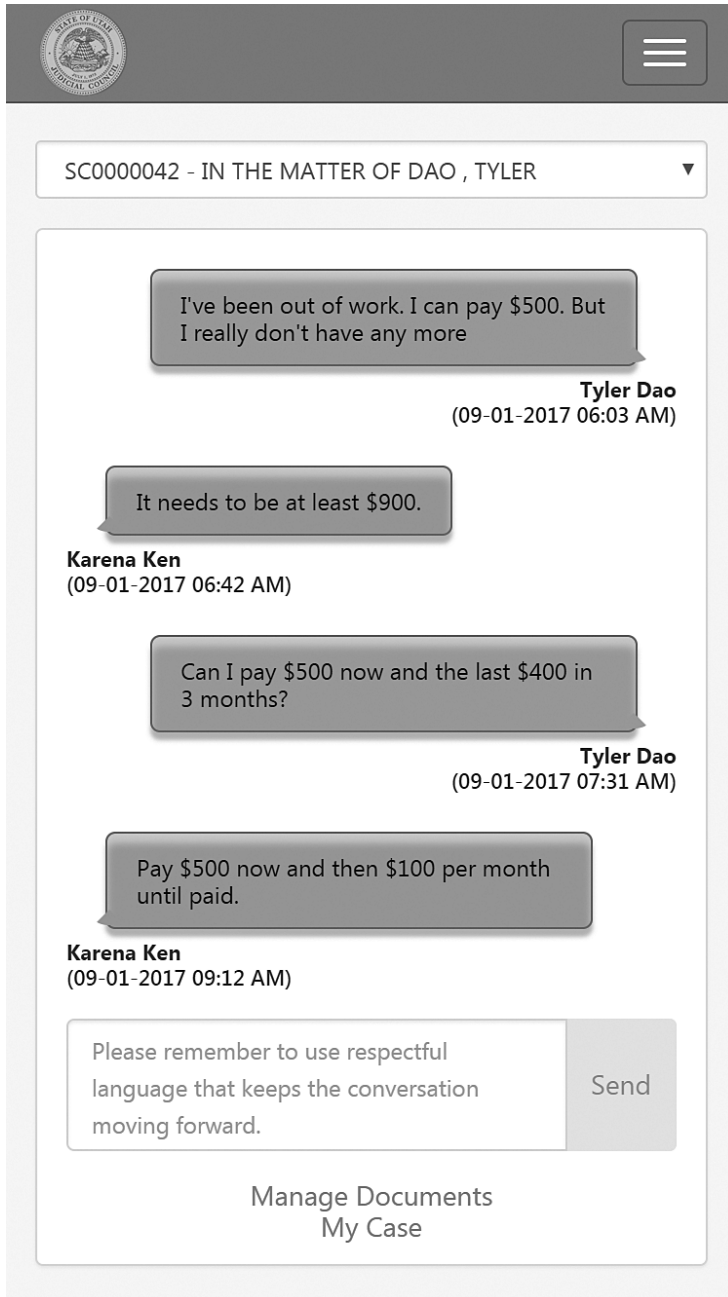
FIGURE 4

The screenshot shows a mobile application interface for the Utah State Courts. At the top left is the Utah State Seal, and at the top right is a hamburger menu icon. The main heading is "Utah State Courts". Below the heading is a message: "A person (facilitator) experienced in small claims cases will be available after you respond to MONEY 4 YOU." This is followed by a disclaimer: "The information you provide now is not part of the court record." The section "My response to MONEY 4 YOU is" contains several options in dark grey buttons: "I want to set up a payment plan or make an offer to settle the claim.", "I have already paid this claim.", "This claim is part of a bankruptcy.", and "This is not my debt." Below these are two rows of checkboxes with text and input fields: "Pending bankruptcy. Case # [input field]" and "Debt discharged. Case # [input field]". Further down are two more buttons: "I want options to respond to MONEY 4 YOU's claim." and "I'm not ready to respond to MONEY 4 YOU yet." At the bottom, there is a line of text: "I want to review information for Small Claims defendants." and two final buttons: "Skip For Now" and "Send Response".

You can skip over all of those if you want, if you're familiar with the program, you certainly don't have to. It can hopefully and eventually take you to a self-help page where you can be directed to other resources; I said an LPP, a lawyer, offering all sorts of resources, the bar website, information from national centers that may provide information about claims and defenses.

We go to the next step because you just can't come to a resolution, at least you haven't come to a resolution. Figure 5 represents where you start talking to each other in a chat room to see if you can't come up with some kind of settlement. And this is what the home screen will look like for most, just like a normal text exchange: So I've been out of work, I can pay 500, I really don't have any more; needs to be at least 900; can I pay 500 now, 400 in three months; pay 500 now, 100 per month until paid.

FIGURE 5: ODR COMMUNICATION PLATFORM/ DEFAULT HOME SCREEN



If you're able to come to a resolution, there's a settlement document that's already prepared and the facilitator will review it or you can create your own if you really want to.

Perhaps you are a bulk filer, you're a plaintiff that's filing a bunch of these cases. Figure 6 is what your home screen is going to look like. Here, you can go to any one of the many cases that you have. You pick whichever one you want, it will bring up the information for that particular piece of litigation and then prompt you after that.³

FIGURE 6: FILER CASE SEARCH (DESKTOP ONLY)

The screenshot shows a web interface for case search. At the top, there are navigation links: 'My Case', 'My Profile', 'Help', and 'Logout'. Below this is a 'Case Search' section with several input fields: 'ODR #', 'Case #', 'Case Location', 'First Name', 'Last Name', and 'Status'. There are 'Find' and 'Clear' buttons to the right of the search fields. Below the search section is a table titled 'Cases (10)' with columns for ODR, Case #, Location, Petitioner, Respondent, Facilitator, and Status. The table contains 10 rows of case data.

ODR	Case #	Location	Petitioner	Respondent	Facilitator	Status
Open	048400005	Salt Lake City Justice Court	MONEY 4 U	TYLER DAO	TOM TANG	Communication
Open	541233548	Fairview Justice Court	MONEY 4 U	RISA BEEBE	DEE X SMITH	Settlement
Open	274002748	Salt Lake City Justice Court	MONEY 4 U	EZRA RAMIREZ	DEE X SMITH	Communication
Open	148454105	Manti City Justice	MONEY 4 U	THOMPSON ONI	TOM TANG	Trial Prep
Open	171900274	Fairview Justice Court	MONEY 4 U	TYLER DAO	GERALD GO	Settlement
Open	048400005	Salt Lake City Justice Court	MONEY 4 U	TYLER DAO	TOM TANG	Communication
Open	541233548	Fairview Justice Court	MONEY 4 U	RISA BEEBE	DEE X SMITH	Settlement
Open	274002748	Salt Lake City Justice Court	MONEY 4 U	EZRA RAMIREZ	DEE X SMITH	Communication
Open	148454105	Manti City Justice	MONEY 4 U	THOMPSON ONI	TOM TANG	Trial Prep
Open	171900274	Fairview Justice Court	MONEY 4 U	TYLER DAO	GERALD GO	Settlement

3. See Figure 7.

FIGURE 7: MyCase SCREEN: DETAILED INFORMATION ABOUT USER'S ODR CASE AS WELL AS ANY OTHER CASES IN THE UTAH COURTS

The screenshot shows a mobile application interface for the Utah Courts. At the top left is the Utah State Seal, and at the top right is a hamburger menu icon. Below the header is a dropdown menu displaying the selected case: "178000232 - MONEY 4 YOU vs. DOE, JOHN". The main content area is divided into two sections. The first section is for the case "JOHN DOE" with address "86 W ENGLISH DR #1212 MIDVALE, UT 84047". The second section is for "MONEY 4 YOU vs. DOE, JOHN" at "MIDVALE JUSTICE COURT", identified as a "Small Claim Case". This section contains a list of case details: Case Number (178000232), File Date (05-03-2017), Assigned Judge (GEORGE VO-DUC), Appearances (1), Continuances (0), Next Hearing (N/A), and Original Claim (\$1,876.00). The third section is for "Online Dispute Resolution" with a "Placeholder" and details: Case Number (ODR0000045), Initiation Date (09-01-2017), and Last Message (MONEY 4 YOU).

178000232 - MONEY 4 YOU vs. DOE, JOHN

JOHN DOE
86 W ENGLISH DR #1212
MIDVALE, UT 84047

MONEY 4 YOU vs. DOE, JOHN
MIDVALE JUSTICE COURT
Small Claim Case

Case Number: 178000232
File Date: 05-03-2017
Assigned Judge: GEORGE VO-DUC
Appearances: 1
Continuances: 0
Next Hearing: N/A
Original Claim: \$1,876.00

Online Dispute Resolution
Placeholder

Case Number: ODR0000045
Initiation Date: 09-01-2017
Last Message: MONEY 4 YOU

So now that you've decided to go to the document section, Figures 8 and 9, you follow the prompts. At this point, you can attach a document, you can create a settlement document, you can preview, edit, sign, reject documents, or delete documents.

FIGURE 8: ODR DOCUMENTS

The screenshot shows the 'ODR Documents' section of a web application. At the top, there is a case identifier 'SC0000042 - IN THE MATTER OF DAO, TYLER'. Below this is a 'Documents' header with two icons: a document with a plus sign and a document with a pencil. A search bar labeled 'Search Document' is positioned below the header. A table lists documents with columns for 'Description' and 'Submitted Date'. The table contains four rows: 'Settlement Agreement' (01-08-2018) with a checkmark icon, 'Communication' (01-06-2018) with a dot icon, 'Signed Contract' (01-06-2018) with a dot icon, and 'Small Claims Affidavit' (12-27-2017). Below the table, it says '1 to 4 of 4 documents' and provides navigation arrows. At the bottom, there is a copyright notice for 2017 Utah State Courts and links for About, Help, Terms, Privacy, and Cookies. Annotations on the right side of the image point to the icons and table rows with the following text: 'Attach a document' (pointing to the plus icon), 'Create new document (Settlement Agreement)' (pointing to the pencil icon), 'Preview, edit, sign or reject a document' (pointing to the checkmark icon), and 'Delete document (only for documents uploaded by a user)' (pointing to the dot icon).

ODR Documents

Attach a document

Create new document (Settlement Agreement)

Preview, edit, sign or reject a document

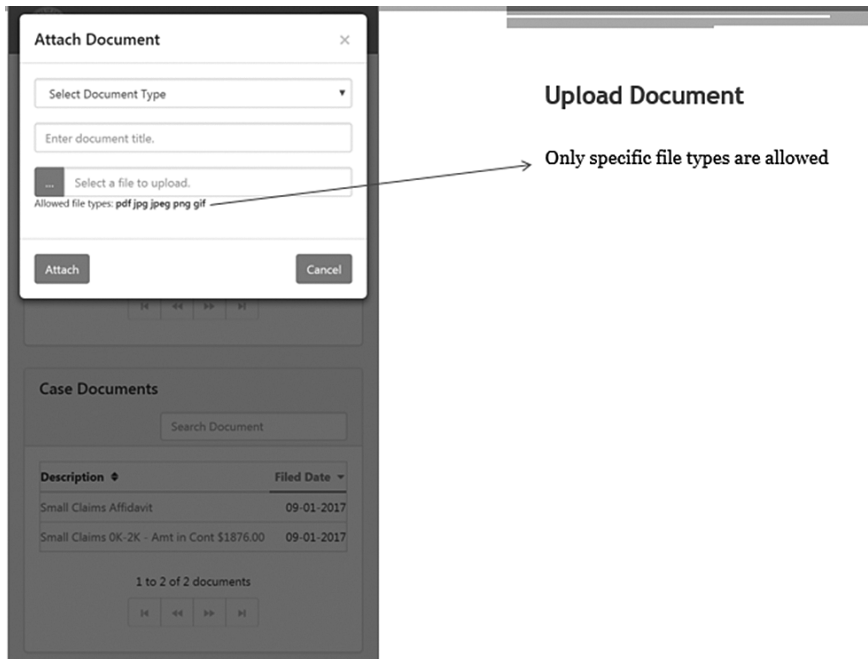
Delete document (only for documents uploaded by a user)

Description	Submitted Date
Settlement Agreement	01-08-2018
Communication	01-06-2018
Signed Contract	01-06-2018
Small Claims Affidavit	12-27-2017

1 to 4 of 4 documents

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FIGURE 9: UPLOAD DOCUMENTS



All of this will be saved and then, if you're not able to resolve your dispute, you check the box at the end that you want it made public, because all of this is private right now, but you may want to make some of it public and you may want the judicial officer to get a hold of when it comes time to resolve the dispute. This is the method by which you would attach the documents.

As soon as both parties have joined the web portal, a facilitator is assigned to the case. The facilitators will go through extensive in-house training. We're going to start with five individuals who have been intimately involved in the development of the process and involved in drafting the manual for the facilitators to use as we train them in the future.

These individuals will be able to answer questions, again, in my view, provide certain limited legal advice, mediate a resolution, and assist parties in building settlement agreement.

We may need to tweak the rule—that's entirely under the auspices of the court—in order to make it clear that the facilitator can also provide some limited legal information even though they're not acting as counsel for one side or the other.

Now, if the case can't be resolved with the facilitator, then the facilitator will build the trial document. So either the facilitator is

going to build a settlement document with the parties and sign off on it or she's going to build a trial document.

Figure 10 is a screen shot of what the settlement agreement screen looks like. You've decided to make that \$900 payment; how's it going to be made, payment dates, and you can electronically sign or reject the document.

FIGURE 10: PREVIEW, EDIT, SIGN, REJECT DOCUMENT

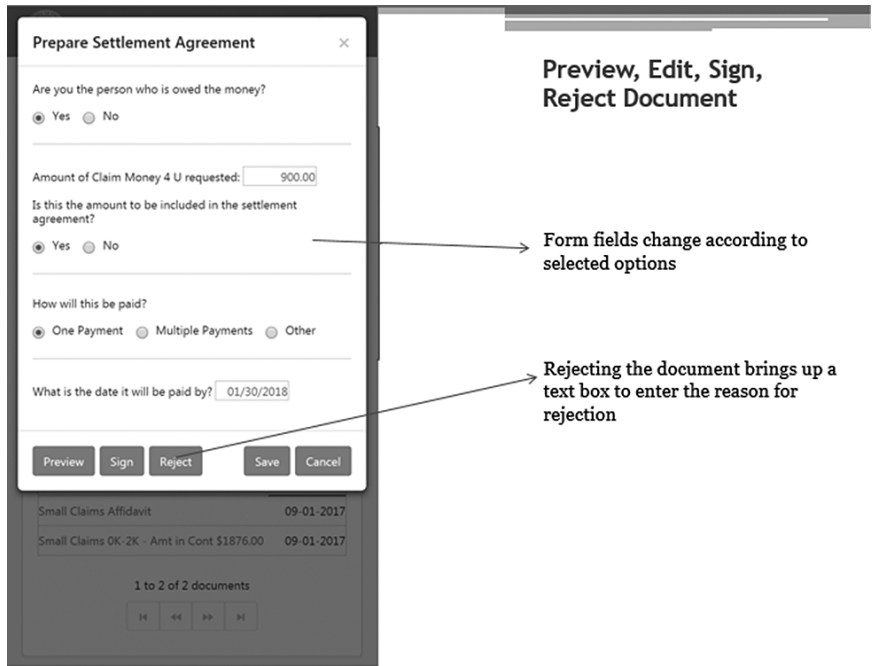


Figure 11 is the facilitator's portal view. It demonstrates that he or she is going to be looking at a number of cases when they log on. They can go and access documents on the cases, pull up the case number with the case files, which also allows them to access the documents, and see where they are in the process.⁴ It also tells the facilitator manager who the facilitator is on any given case.

4. See Figure 11.

FIGURE 11: FACILITATOR ODR PORTAL VIEW

Welcome: ROHAN TULADHAR (AOC)

Home Cases My Profile Admin Help Logout

Search Cases

Facilitators ODR Case # Coris Case #

Party First Name Party Last Name Location

Status

Cases (5)

ODR Case #	Status	Status Date	Coris Case #	Location	Plaintiff	Defendant	Facilitator
SC0000042	Negotiation	10-12-2017 2:00 PM	048400005	Salt Lake City Justice Court	TILER DAO	SATEKI TAULANGA	Kerry Smith
SC0000043	Negotiation	11-09-2017 1:15 AM	048400005	Fairview Justice Court	RISA BEEBE	WILMA BEELER	DEE X SMITH
SC0000044	Negotiation	11-01-2017 5:02 PM	048400006	Salt Lake City Justice Court	EZRA RAMIREZ	JOSE JUAN GONZALEZ	Tom Tang
SC0000045	Negotiation	10-27-2017 10:17 PM	048400006	Fairview Justice Court	FAR WEST BANK	TINA PADILLA	Kerry Smith
SC0000046	Negotiation	12-01-2017 1:00 AM	048400006	Manti City Justice	THOMPSON OIL	BRENT COX	Kerry Smith

Let's say you can't resolve the dispute with the facilitator, then the facilitator is going to prepare a trial preparation document. The trial preparation document will narrow the issues, the facilitator will help the parties describe what's left, what they've been able to resolve, if anything, and what they've been unable to resolve and put it in simple understandable terms for the judge. The facilitator will allow the parties to upload whatever documents they think are appropriate and may help guide that decision. If the judge feels like he or she needs a live hearing, they can do that; if not, the parties can elect to do this entirely electronically and have the judge make a decision.

Based on the data, we know parties want their disputes resolved rapidly. Professor Terry and I were speaking about this last night. I think the data suggests that they want their disputes done within six weeks. This will get them done in under six weeks. Again, soup to nuts.

If they don't like the outcome, if they've gone to trial and they don't like it, they have a complete de novo right of appeal in our district court that they can take advantage of. If they do, there will also be collection proceedings that will be available through the same platform that comes out in Phase II.

So we're well on the way to rolling out ODR. We'll be testing it through April, rolling it out in one of our largest small claims courts in June, and we'll be kind of tweaking and testing for the next year as we roll it out there.

We're going to be aided in this effort by the National Center for State Courts. They have committed to providing an evaluation of the project along the metrics, the success metrics, that we outlined earlier, tell us where we've succeeded, where we fall short, and what changes we need to make.

If it's successful, then a year from now I anticipate we'll roll it out across the state in all small claims cases.

Now, at this point in time we're only authorized to implement ODR in small claims court; but it doesn't take much of a stretch of the imagination to see that if it's successful, we'll take it to the next level.

I'm ready to open this up for questions. Thank you.

QUESTION: When you say small claims, are you leaving out landlord/tenant, or is this only debt collection?

ANSWER: It's definitely not only debt collection. Small claims—

QUESTION: Just up to \$11,000?

ANSWER: —does not include eviction proceedings. Now, if it's a debt and a landlord/tenant dispute while you're trying to collect, don't quote me on the jurisdiction but I think you can bring that in small claims.

But, you know, cleaning bills, repair bills, any form of debt that's generated for whatever activity is the typical small claims case, but it's certainly not limited to those.

QUESTION: Good. It sounds wonderful.

ANSWER: Yes. Paula.

QUESTION: This is amazingly awesome; the ODR is great. So two questions, and you probably said this and I might have missed it: Is the facilitator available outside of normal court hours? Obviously the parties might be going back and forth, but is the facilitator—

ANSWER: So when I spoke about the parties, I should have included the facilitator communicating asynchronously on their own time, too. If the facilitator wants to communicate at 3 a.m., he or she can do that as well. So you can engage in a live back and forth or you can just enter into the chat room and leave a message.

QUESTION: The facilitator is a court employee, though?

ANSWER: The facilitator is not a court employee. The facilitator is—right now we have a lot of volunteers that serve as judges pro tem that take all these cases. And the anticipation is those individuals will then receive specialized training and come in and participate in the mediation. The second thing is you don't have to be a lawyer to be a facilitator either.

QUESTION: Okay. And then in your second bullet—and I know you probably said this and I missed it. But when you're talking about the trial online, that's at the small claims level?

ANSWER: Only at the small claims level. And I would say that some of the biggest push-back that I have received on the ODR program surprisingly comes from my former colleagues on

the trial bench, not at the small claims level, but at the district court level. It's the difference between high church and low church, right? This may be the only time this year you see me in a suit and tie. I'm definitely not high church. And what I mean by that is they really think that it undercuts the dignity of the proceedings, that the party needs to be in front of them, see them and take the oath in front of the judicial officer and not just sign a validation that they're testifying truthfully.

QUESTION: Maybe they see it as the camel's nose, right?

ANSWER: That's a specific metaphor that's been used, yes. But eBay, I understand, is resolving 60 million disputes a year using ODR. You know, our court system should not just turn into a place where debt collectors go to file and receive defaults, and if we don't do something about it, that's the direction that it's going.

And, frankly—let me tell you this as an aside—most of the debt collectors we've talked to have been supportive. I think from their perspective a default isn't worth anything, right, but if they can have a meaningful dialogue, I think they would prefer that and anticipate they probably could have better response rates.

QUESTION: In New York they're going to do ODR also, and I think you're aware of the problems that they're having. They've elected to do just small claims where we don't have consumer debt because of objections from the legal services community who felt that consumer debt was dangerous because the defendant would not know their defenses. And there was great opposition so they finally decided just to do small claims. Did you get any push-back from your legal services community?

ANSWER: So I've been involved in the efforts in New York through some chats with them about that. And the short answer to your question is, a little recently, but not very much.

We included a lot of different backgrounds from the very beginning. And I think one of the things that will allow our ODR to work is the facilitator. So all the defenses that the individual would have to service, or what have you, which I understood were part of what New York was concerned about losing, those will remain so they're not giving any of those up. And, in fact, they'll have some form of—I hesitate to say representation, but somebody, hopefully, will be able to answer some of their very basic questions and help them along the way, be trained to understand which form of income is off limits, for example.

So I think a lot of the problems that were expressed were before we've built in the solution. As I said before, I'm told 85 percent of debt collection cases are resulting in a default. I can't

imagine that ODR is going to make it worse. And if it does, it's a failure, I mean, it's a flat-out failure if it's more defaults faster. I will be shocked if that's the result. But that is a legitimate concern.

QUESTION: Is this open to anyone or are there certain income limitations?

ANSWER: Open to everyone, everyone and anyone, no income limitation in entering into small claims court. Jurisdiction is only by amount and some case type. So you could actually bring a tort claim, for example, in small claims court, but it doesn't frequently happen.

QUESTION: And with this system, you're able to have an attorney represent you or go in as a self-represented party as well?

ANSWER: Absolutely. Although the small claims from before and now is really designed to encourage you to act as counsel; just many will come in with counsel, but they're really simplified rules. It's quick justice.

QUESTION: I'm curious—a lot of the conversation as to debt focuses on the debt war. I'm curious as to some of the nitty-gritty protections or focuses this program takes for the debtee, to ensure that they are educated, because often the debtor is able to really bring inequality to bring in that debt, whereas even with these procedural safeguards, that he may not have that same level of, I guess, representation. I'm curious how their rights and interests are protected in this.

ANSWER: So I think that they're protected—in a number of ways. One, they don't have the access right now—, but hopefully we'll be able to kind of guide them through potential defenses like statute of limitations depending on, you know, when was the debt incurred, when was the action filed, things like that; they'll have access to resources online, kind of directly available to them; access to LPPs or other low-cost providers and then, most importantly, the facilitator, which is what I think will really make the program unique in Utah—facilitators specifically trained and allowed, again hopefully, to answer basic questions, recognize—you know, we're just using debt, again, as the example, but recognize what may be off limits, what's on limits, to level the playing field a little bit.

Part of the hope is to create more of a level playing field to address what you're concerned with because there's an even greater, I think, information asymmetry without the ODR program.

QUESTION: So I have three technology questions related to scaling this up. And the first one is how difficult or sophisticated is the technology piece of it? The related part is did you build it in-

house or contract it out? And then the third part is do you think other states could adapt it and do a little bit of tweaking and have it work or is it specific to Utah?

ANSWER: That's a great question. So with respect to the first question, the answer is I have no idea how complicated or simple the underlying technology is. We have a great IT department. And I will tell you that my clerks, their favorite 15 minutes each day is watching me try to turn a computer on. So I can't answer the first question.

The second question is we built it entirely in-house. The task force that we initially put together, we looked at pricing out some outside options and ultimately just determined that it was too expensive. So we made it a priority in-house and we have developed it in-house.

As to the third question, and I think the most important one and really what you're driving at, is this going to be open source or not. We haven't crossed that bridge yet. I, along with others, are proponents of sharing this technology with other states.

Other states have expressed an interest informally, and I am all in favor of that because I think keeping this robust, keeping it up-to-date is going to involve a lot of resources and it comes as no surprise that resources at the state level are often quite limited.

QUESTION: What other practice areas, other than consumer debt, do you think would lend itself well to this type of online adjudication?

ANSWER: I think it's all of small claims. I'm only focusing on it because debt forms a large part of what goes on in small claims. But whatever the case is, maybe it's a tort claim that you're doing, a little bump and run, whatever it is, I think that this is, frankly, the wave of the future.

It's the way we conduct all kinds of other business. I mean, we deposit checks now via our smart phone. The courts need to stay relevant. And that takes me back to the taxi/Uber point; in just three years, technology made a joke that you could tell for 50 years irrelevant. And courts better wake up or they're going to find themselves in that same position.

Thank you very much.

(Applause.)